

**Scroll down to access content.**

## **REGULATORY PROCEDURES**

### **Executive Order 13563 and Executive Order 12866**

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with obtaining the regulatory objectives; and, in choosing among alternative regulatory approaches, select those approaches that

maximize net benefits. Executive Order 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

This rule is economically significant as it will have an annual effect on the economy of \$100 million or more. EO 12866 §3 at (f). In this section, we present a summary of the costs and benefits associated with the revisions to part 60-741. OFCCP estimates that first-year costs in the rule to be in the range of \$349,510,926 to \$659,877,833. This includes 1) one-time costs; 2) recurring costs; 3) capital start-up costs; and 4) operations and maintenance costs.<sup>1</sup> The recurring costs in years contractors do not invite all employees to voluntarily self-identify as an individual with a disability will range from \$162,371,816 to \$395,258,387. The recurring costs in the years that contractors do invite all employees to voluntarily self-identify as an individual with a disability will range from \$242,345,778 to \$480,476,442.

#### **A. Introduction**

The final regulatory impact analysis is substantially different from the preliminary regulatory impact analysis presented in the section 503 NPRM based on comments received during the public and interagency comment period. First, the final rule has been scaled down significantly so that it focuses on requirements essential to creating accountability, and supporting the ability of contractors to conduct meaningful self-assessments using more data. This rule also minimizes the costs to contractors while not sacrificing the agency's ability to conduct effective compliance evaluations. A detailed discussion of the proposals in the NPRM that OFCCP did not adopt in the final rule is

---

<sup>1</sup> These costs include both establishment and contractor company level costs.

included in the Discussion of Impacts section below. Second, OFCCP increased the number of contractor establishments affected by the rule to take into account some of the public comments at the NPRM phases of the rulemaking. Third, the analysis acknowledges that some establishments and/or companies may incur higher costs under the final rule and illustrates a range of costs to implement several provisions. The analysis considers, when appropriate, costs that may be incurred by contractors' headquarters versus establishments, and differences between contractors with automated human resources and systems and those with manual systems.

#### 1. Eliminated Several Proposals in the NPRM

While all the proposals in the NPRM had value, after assessing the comments received on the NPRM published on December 9, 2011, we made several changes in the final rule. OFCCP reconsidered whether the cost of several proposals in the NPRM could be justified by their potential benefits, and whether alternative methods or approaches could achieve comparable or acceptable benefits for less cost or burden. We retain in the final rule those provisions proposed in the NPRM that create greater contractor accountability through enhanced data collection and recordkeeping. Therefore, as an example, the final rule does not require each contractor to establish three "linkage" agreements with various disability service organizations to facilitate disability recruitment.

Other examples of how the final rule takes a tailored approach include, but are not limited to, eliminating the proposal that contractors reproduce the entire equal opportunity clause in all contracts and subcontracts; the proposal that contractor staff training must cover a list of specific training items; the proposal to mandate the adoption

of written reasonable accommodation procedures; the proposal to mandate annual reviews of personnel policies; and the proposal to mandate that contractors identify the official responsible for the affirmative action program on all communications are also eliminated in the final rule.

## 2. Increased the Contractor Establishment Count

OFCCP received comments on the estimated number of contractor establishments, including a recommendation to accept a count of 285,390 using the Veterans Employment Training Services (VETS) annual report. While OFCCP declines to exclusively rely on the VETS report, we present an estimated high end for the range of the cost of the rule based on a contractor establishment number of 251,300. This number is based on 2010 VETS data from their pending Information Collection Request.<sup>2</sup>

All costs and hours in the burden analysis of this final rule are calculated using these revised numbers for Federal contractor establishments. Federally-assisted construction contractors are not subject to these regulations and, therefore, are not included in this total. See §60-741.2(i) for the definition of “Government contract.”

## 3. Revised and Increased Burden Estimates

OFCCP received approximately 130 comments on the burden imposed by the section 503 NPRM from individuals, disability associations, companies and industry groups. A few commenters stated that the benefits of the proposed rule outweigh the costs. The majority of comments on the burden of the proposed rule expressed different views. Commenters noted that OFCCP dramatically underestimated the burden

---

<sup>2</sup>OMB Control Number 1293-0005, Federal Contractor Veterans’ Employment Report, VETS - 100/VETS-100A , [http://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201104-1293-003](http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201104-1293-003) (last accessed Aug. 13, 2013).

associated with the rule. Several commenters provided their own burden estimates, though often with little discussion or explanation of their methodology, that they asserted more accurately reflected the impact that the proposed provisions would have on contractors. The estimates provided by commenters were significantly higher than those used in the NPRM and resulted in total costs that far exceeded the NPRM's estimate. Commenters also expressed concern that the proposals in the NPRM seeking to require contractors to collect data and engage in other personnel activities would change their business functions and would not lead to jobs for individuals with disabilities. Commenters especially emphasized the costs of modifying their existing human resources information systems in order to collect new categories of data on individuals with disabilities.

OFCCP acknowledges that it is challenging to estimate the precise amount of time each establishment or headquarters, as appropriate, will take to engage in certain activities. However, in response to public comments, the final regulatory impact analysis attempts to account for the fact that smaller contractors may not have the same human resources capabilities as larger contractors. OFCCP does so by providing low and high range estimates for certain requirements. This approach is taken to distinguish between contractors with automated application and human resources information systems represented at the low end of the range in terms of burden, and contractors with manual systems represented at the high end of the range. The distinction is applied, for example, when estimating burden related to meeting the data collection requirements of the final rule. The high end of the range estimate is based on the assumption that smaller contractors with 50-100 employees may still use manual application or human resources

processes. These contractors would likely expend more time conducting the kind of data collection and analysis required under the final rule. The range also factors in varying estimates for the number of applicants who would fill out the invitation to self-identify. In addition, as mentioned earlier, OFCCP presents burden estimates based on two different contractor establishment numbers in order to reflect the range of opinions about the size of the universe of contractors affected by this rule.

On \_\_\_\_\_, OFCCP published in the Federal Register a final rule amending the VEVRAA implementing regulations at 41 CFR part 60-300. Many of the revisions contained in this section 503 final rule mirror revisions contained in the VEVRAA final rule. In consideration of the fact that contractors will, thus, already be required to perform certain activities, OFCCP eliminated the burden in this analysis for provisions that mirror requirements in part 60-300. OFCCP also decreased the burden for one-time or capital and start-up costs that are substantially similar to those that are already required under the VEVRAA final rule.

## **B. The Need for the Regulation**

Employment discrimination and underutilization of qualified workers, such as individuals with disabilities and veterans, contribute to broader societal problems such as income inequality and poverty. The median household income for “householders” with a disability, aged 18 to 64, was \$25,420 compared with a median income of \$59,411 for households with a householder who did not report a disability.<sup>3</sup> Controlling for age and race we find that workers with a disability, on average, earn less than private sector

---

<sup>3</sup> Income, Poverty and Health Insurance Coverage in the United States: 2011, Current Population Reports, issued September 2012, <http://www.census.gov/prod/2012pubs/p60-243.pdf> (last accessed July 8, 2013), p. 10. A “householder” is the person (or one of the people) in whose name the home is owned or rented and the person to whom the relationship of other household members is recorded. Typically, it is the head of a household. Only one person per household is designated the “householder.”

workers without a disability. The mean hourly wage of those with a disability is \$17.62 (with a median of \$13.73) compared to \$21.67 (median \$16.99) for those without a disability.<sup>4</sup> Controlling for age and race, male workers with a disability earn 23 percent less than males without a disability. The disability gap for females is 20 percent.<sup>5</sup> While 28.8 percent of individuals, ages 18 to 64, with a disability were in poverty in 2011, the data show that 12.5 percent of those individuals without a disability were in poverty.<sup>6</sup>

Based on our analysis of the American Community Survey (ACS) 2008-2010 Public Use Microdata (PUMS), and controlling for age and race we found that:<sup>7</sup>

- Males with disability had a 7.2 percentage point higher unemployment rate than males without a disability.
- Females with disability had a 6.5 percentage point higher unemployment rate than females without a disability.
- Females with a disability had a 29.2 percentage point higher probability of not being in the labor force than females without a disability.

A 2009 report found that “having a disability is associated with lower earnings due to decreased ability to work, prejudice, and other factors.”<sup>8</sup> There are a number of

---

<sup>4</sup> OFCCP ran wage regressions using the natural log of effective hourly wages calculated as real income divided by usual hours per week and weeks per year. The weeks per year variable is categorical so the midpoint of each category was used as a proxy for the number of weeks worked. Explanatory variables include age and race. The sample was restricted to individuals aged 18 to 64 employed in the private sector. Individuals currently in the armed forces were not included in the sample. All OFCCP models used ACS 2008-2010 Public Use Microdata (PUMS).

<sup>5</sup> Id.

<sup>6</sup> Income, Poverty and Health Insurance Coverage in the United States: 2011, Current Population Reports, issued September 2012, <http://www.census.gov/prod/2012pubs/p60-243.pdf> (last accessed July 8, 2013)

<sup>7</sup> OFCCP ran wage regressions using the natural log of effective hourly wages calculated as real income divided by usual hours per week and weeks per year. The weeks per year variable is categorical so the midpoint of each category was used as a proxy for the number of weeks worked. Explanatory variables include age and race. The sample was limited to individuals aged 18 to 64 employed in the private sector. All OFCCP models used ACS 2008-2010 Public Use Microdata (PUMS).

<sup>8</sup> Changing Demographic Trends that Affect the Workplace and Implications for People with Disabilities, Executive Summary (Nov. 30, 2009), p. 4. “Studies agree that disability incidence is related to income and

hypotheses concerning disparities in labor force participation, employment rates, and wages. While knowledge of opportunities, differences in access and attainment of training and education, and underutilization of individuals with disabilities likely contribute to these disparities, the culture of the typical workplace and discrimination are also factors in some employment settings. However, there is little empirical data upon which to base targeted interventions. Data collection remains a critical need.

The final rule is intended to provide contractors with the tools needed to evaluate their own compliance and proactively identify and correct any deficiencies in their employment practices. Because the existing regulations implementing section 503 do not provide contractors with adequate tools to assess whether they are complying with their nondiscrimination and affirmative action obligations to recruit and employ qualified individuals with disabilities, the revisions of the final rule will assist contractors in averting potentially expensive violation findings by OFCCP.

### **C. Discussion of Impacts**

In this section, OFCCP presents a summary of the costs associated with the revisions to part 60-741. The estimated cost to contractors is based on Bureau of Labor Statistics data in the publication “Employer Costs for Employee Compensation” (September 2011), which lists total compensation for management, professional, and related occupations as \$50.11 per hour and administrative support as \$23.72 per hour. OFCCP estimates that 52 percent of the burden hours will be management, professional, and related occupations and 48 percent will be administrative support.

#### **Table 1: Contractor New Requirements – 171,275 Establishments**

---

earnings. A number of intertwined relationships, however, make it somewhat difficult to sort out cause and effect.”



Burden	Low Cost	High Cost
<b>One-Time Burden</b>		
EO Clause, Parag 10 (Include “Disability” EEO Statement)	\$320,660.14	\$320,660.14
741.5(d) (Modify EO Clause)	\$1,603,263.00	\$1,603,263.00
741.42 (Modify Application Systems)	\$2,101,102.72	\$2,583,328.54
<b>Total</b>	<b>\$4,025,025.86</b>	<b>\$4,507,251.68</b>
<b>Recurring Burden</b>		
741.42 (Invitation to Self-Identify)	\$9,619,542.08	\$9,619,542.08
741.42 (Invitation to Self-Identify Employee Burden)	\$68,751,157.00	\$68,751,157.00
741.42 (Recordkeeping)	\$1,603,263.25	\$1,603,263.25
741.44(f) (Review Outreach and Recruitment)	\$3,174,438.00	\$3,174,438.00
741.44(f)(4) (Outreach and Recruitment Recordkeeping)	\$1,068,842.17	\$1,068,842.17
741.44(h) (AAP Audit Recordkeeping)	\$1,068,842.17	\$1,068,842.17
741.44(k) (Data Collection and Analysis)	\$3,740,925.75	\$6,840,549.94
741.45 (Utilization Analysis)	\$6,413,015.00	\$8,978,223.00
741.45 (Utilization Analysis Recordkeeping)	\$1,068,842.00	\$1,068,842.00
<b>Total</b>	<b>\$96,508,867.42</b>	<b>\$102,173,699.61</b>
<b>Capital and Start-up</b>	<b>\$28,312,120.00</b>	<b>\$39,086,481.00</b>
<b>Rule Familiarization</b>	<b>\$8,582,590.25</b>	<b>\$34,330,361.00</b>
<b>Operations and Maintenance</b>	<b>\$616,590.00</b>	<b>\$1,356,498.00</b>
<b>Reasonable Accommodations</b>	<b>\$114,770,291.00</b>	<b>\$114,770,291.00</b>
<b>Total</b>	<b>\$252,815,484.53</b>	<b>\$296,224,582.29</b>

**Table 2: Contractor New Requirements – 251,300 Establishments**

Provision	Low Cost	High Cost
<b>One-Time Burden</b>		
EO Clause, Parag 10 (Include “Disability” EEO Statement)	\$470,468.00	\$470,468.00
741.5(d) (Modify EO Clause)	\$784,115.00	\$784,115.00
741.42 (Modify Application Systems)	\$3,102,510.41	\$3,814,616.30
<b>Total</b>	<b>\$4,357,093.41</b>	<b>\$5,069,199.30</b>
<b>Recurring Burden</b>		
741.42 (Invitation to Self-Identify)	\$14,114,063.00	\$14,114,063.00
741.42 (Invitation to Self-Identify Employee Burden)	\$68,751,667.00	\$68,751,667.00
741.42 (Recordkeeping)	\$2,352,344.00	\$2,352,344.00
741.44(f) (Review Outreach and Recruitment)	\$4,704,687.82	\$4,704,687.82

<b>741.44(f)(4) (Outreach and Recruitment Recordkeeping)</b>	\$1,568,229.27	\$1,568,229.27
<b>741.44(h) (AAP Audit Recordkeeping)</b>	\$1,568,229.27	\$1,568,229.27
<b>741.44(k) (Data Collection and Analysis)</b>	\$5,488,802.46	\$10,036,667.35
<b>741.45 (Utilization Analysis)</b>	\$9,409,375.64	\$13,173,125.90
<b>741.45 (Utilization Analysis Recordkeeping)</b>	\$1,568,229.27	\$1,568,229.27
<b>Total</b>	\$109,525,627.73	\$117,837,242.88
<b>Capital and Start-up</b>	\$41,555,091.78	\$57,716,207.82
<b>Rule Familiarization</b>	\$12,592,643.00	\$50,370,572.00
<b>Operations and Maintenance</b>	\$904,680.00	\$1,990,296.00
<b>Reasonable Accommodation</b>	\$114,770,291.00	\$114,770,291.00
<b>Costs to Companies</b>	<b>\$283,705,426.92</b>	<b>\$347,753,809.00</b>

**Table 3: Completing Pre-offer Self-Identification**

	<b>171,275 Establishments</b>		<b>251,300 Establishments</b>	
<b>Provision</b>	<b>Low Cost</b>	<b>High Cost</b>	<b>Low Cost</b>	<b>High Cost</b>
<b>741.42(a)</b>	\$96,695,442.00	\$212,729,213.00	\$141,874,556.25	\$312,124,023.75

1. Regulatory Familiarization

Several commenters noted that the proposed rule did not quantify the burden of reading and understanding the section 503 revisions on contractors. OFCCP acknowledges that 5 CFR 1320.3(b)(1)(i) requires agencies to include in the burden analysis for new information collection requirements the estimated time it takes for contractors to review and understand the instructions for compliance. In order to minimize the burden, OFCCP will publish compliance assistance materials including, but not limited to, factsheets and “Frequently Asked Questions.” OFCCP will also host webinars for the contractor community that will describe the key provisions in the final

rule, and conduct listening session to identify any specific challenges contractors believe they face, or may face, when complying with the requirements of the final rule

OFCCP estimates it will take, at a minimum, 1 hour to have a management professional at each establishment either read compliance assistance materials provided by OFCCP or participate in an OFCCP webinar to learn about the new requirements of the final rule. OFCCP believes that this is a reasonable estimate since there are substantially fewer new requirements in the final rule than proposed in the NPRM, and contractors already have at least one person that is responsible for overseeing their compliance with OFCCP's regulations. The estimated cost of this burden is based on data from the Bureau of Labor Statistics in the publication "Employer Costs for Employee Compensation" (September 2011), which lists total compensation for a management professional at \$50.11. Therefore, the estimated burden for rule familiarization is 171,275 hours (171,275 contractor establishments x 1 hour = 171,275 hours). We calculate the total estimated minimum costs as \$8,582,590 (171,275 hours x \$50.11/hour = \$8,582,590) or \$50 per establishment.

Commenters suggested that reviewing the requirements of the final rule would take up to 6 hours. OFCCP declines to adopt this calculation since it is based on reviewing the proposed rule which included a significant number of additional requirements that are not in the final rule. Therefore, OFCCP estimates the maximum for reviewing the rule would be 4 hours for a total of 685,100 (171,275 contractor establishments x 4 hour = 685,100 hours). We calculate the total maximum estimated start-up costs as \$34,330,361 (685,100 x \$50.11/hour = \$34,330,361) or \$200 per establishment

Assuming there are 251,300 establishments impacted by the final rule, the estimated minimum burden for rule familiarization would be 251,300 hours (251,300 contractor establishments x 1 hour = 251,300 hours). The total estimated minimum costs would be \$12,592,643 (251,300 hours x \$50.11/hour = \$12,592,643) or \$50 per establishment. OFCCP estimates the maximum for reviewing the rule would be 4 hours for a total of 1,005,200 hours (251,300 contractor establishments x 4 hour = 1,005,200 hours). The total maximum estimated maximum costs would be \$50,370,572 (1,005,200 hours x \$50.11/hour = \$50,370,572) or \$200 per establishment.

2. Section 60-741.5 Equal opportunity clause (EO Clause)

EO Clause, Paragraph 4

Paragraph 4 of the final rule clarifies the contractor's duty to provide notices of employee rights and contractor obligations in a manner that is accessible and understandable to persons with disabilities. The final rule revises the parenthetical at the end of the sentence by replacing the outdated suggestion of "hav[ing] the notice read to a visually disabled person" as an accommodation with the suggestion to provide Braille, large print, or other versions that allow persons with disabilities to read the notices themselves. The NPRM estimated that it would take contractors ten (10) minutes to receive an accommodation request and maintain records of compliance.

Upon further consideration, OFCCP determines that there are no new costs related to this provision. The nondiscrimination requirements of section 503 currently require contractors to provide reasonable accommodation. See 41 CFR 60-741.21(f). This modification simply updates the example of a possible accommodation that contractors

may provide to a visually impaired person, and does not impose any new obligation on contractors.

Paragraph 4 of the final rule also allows contractors to post notices regarding employee rights and their equal employment opportunity obligations electronically if the contractor has actual knowledge that employees will have access to them. OFCCP estimates no additional burden for contractors that opt to post relevant notices electronically. This provision simply provides contractors with another, more expedient, means to meet its existing obligations.

Paragraph 4 of the final rule requires contractors to electronically post a notice of job applicants' rights if the contractor utilizes an electronic application. The existing regulations require contractors to post notices regarding employee rights and equal employment opportunity obligations in conspicuous places for employees and applicants. See 41 CFR 60-741.5(a)(4). The final rule clarifies how contractors can meet this existing obligation for on-line applicants. Therefore, there is no new burden for this provision.

#### EO Clause, Paragraph 7

Under existing Federal requirements, including EO 11246, contractors are required to state in solicitations and advertisements that the company is an equal opportunity employer. See 41 CFR 60-1.4(a)(2). The NPRM proposed adding a new paragraph 7 to the EO Clause that would require the contractor to also state in solicitations and advertisements that it is an equal opportunity employer of individuals with disabilities. The NPRM estimated that it would take contractors five (5) minutes to comply with this provision. A few commenters noted that this would increase the costs

of solicitations and advertisements since some newspapers and other publications charge for each word of a solicitation.

The final rule incorporates the requirement for contractors to state in all solicitations and advertisements that the company is an equal opportunity employer of individuals with disabilities. OFCCP acknowledges that some contractors may experience an increased cost in light of this requirement. However, there is no indication based on the comments that OFCCP received on this issue that this would be a significant problem for a substantial number of contractors. In fact, the cost of many advertisements and solicitations are based on size (i.e., quarter-page, half-page, full-page) or by listing, rather than the number of words in the text. Moreover, the cost of an advertisement will also depend on the publication's circulation and location. The number of words in the text actually appears to be a lesser factor when determining cost. After some research, OFCCP determined that the average cost per word nationally is between 10 and 20 cents for a classified advertisement. Therefore, the cost would not be greatly impacted by adding individuals with disabilities to the affirmative action statement in advertisements.

Information from OFCCP field staff indicates that many contractors already include "disabilities" in their equal employment opportunity statement for solicitations. Therefore, based on field experience evaluating contractor practices, OFCCP estimates that approximately 40 percent of contractor establishments, or 68,510, currently comply with this requirement. OFCCP estimates that the remaining 102,765 contractor establishments will have a one-time burden of 5 minutes for amending their existing standard equal employment opportunity statement to include "individuals with disabilities" or similar language. Therefore, the total burden for this provision is 8,564

hours (102,765 contractor establishments x 5 minutes/60 = 8,564 hours). The cost for this provision is approximately \$320,660.

Assuming there are 251,300 contractor establishments impacted by the final rule, the burden for this provision would be 12,565 hours (150,780 contractor establishments x 5 minutes/60 = 12,565 hours). The total cost of the provision would be \$470,469.

#### Section 60-741.5(d)

The NPRM proposed requiring the entire EO Clause be included verbatim in Federal contracts. The NPRM estimated that it would take contractors 5 minutes to download and incorporate the required text in contract templates. OFCCP received nineteen comments regarding the proposed provision. Commenters primarily asserted that the proposed requirement would be too burdensome, since the length of contracts would increase significantly, and requested that incorporation by reference be retained. In response to these comments, the final rule permits incorporation of the EO Clause by reference with the addition of some additional language that OFCCP has provided in the regulatory text summarizing VEVRAA's purpose. OFCCP estimates that contractors will spend approximately 15 minutes modifying existing contract templates to ensure the additional language is included. The burden for this provision is 42,819 hours (171,275 contractor establishments x 5 minutes/60 = 42,819 hours). The cost for this provision is \$1,603,263.

Assuming there are 251,300 contractor establishments impacted by the final rule, the burden for this provision would be 20,942 hours (251,300 contractor establishments x 5 minutes/60 = 20,942 hours). The cost for this provision would be \$784,115.

3. Section 60-741.41 Availability of the affirmative action program

The NPRM proposed requiring contractors to inform off-site employees of the availability of the affirmative action program for review. The burden for this provision was accounted for in the Paperwork Reduction Act Analysis of the VEVRAA NPRM. The final rule does not incorporate this proposal. Instead, the final rule retains the language in the existing § 60-741.41, but notes that the data metrics required by § 60-741.44(k) are not required to be made available to the contractor's employees or applicants. Therefore, no new burden is created.

4. Section 60-741.42 Invitation to self-identify

The NPRM proposed several significant revisions to this section, including requiring the contractor to invite all applicants to self-identify as an individual with a disability prior to an offer of employment and adding a new requirement for contractors to annually invite all employees to self-identify as an individual with a disability, among other things. The NPRM estimated that it would take 5 minutes for the contractor to download and save the text prescribed by OFCCP for the invitation to self-identify into a separate document that it can store electronically, include it in electronic applications, or print out to include in a hard copy application package, as needed. The NPRM further estimated that it would take contractors 5 minutes to download and save the prescribed text for the annual survey to invite employees to self-identify as an individual with a disability. Finally, the NPRM estimated that it would take contractors 1 minute to maintain the self-identification forms.

Several commenters expressed concern about the burden associated with the pre-offer invitation to self-identify. Commenters stated that OFCCP's estimate of 5 minutes



was unreasonable. Commenters asserted that the pre-offer invitation to self-identify would require substantial modifications to contractors' application systems. Human resources personnel would also have to expend time and resources gathering and filing the documents. Commenters further asserted that the administrative costs would greatly outweigh the benefits of the pre-offer self-identification. At least two commenters stated that the pre-offer self-identification should not present a significant burden since contractors currently invite individuals to self-identify their race, gender, and status as a protected veteran.

The final rule adopts the voluntary, pre-offer self-identification invitation requirement. See 41 CFR 60-741.42 (a). However, in order to ease the burden on contractors, OFCCP is creating a single, one-page form entitled "Voluntary Self-Identification of Disability." This standard form will be used for the pre-offer, post-offer, and the invitation to self-identify; it will be made available on the OFCCP Web site. This should decrease the administrative time that contractors will need to spend putting policies and procedures in place to comply with this requirement.

OFCCP modified its approach to this calculation to specifically distinguish between contractors with web-based or automated systems and those relying on manual or paper-based systems. Larger contractors, those with more than 100 employees are more likely to have web-based systems. OFCCP estimates that 72 percent of contractor companies utilize Web-based application systems.<sup>9</sup> Working at the corporate level, contractors will take 1.5 hours to review and retrieve existing sample invitations to self-identify, adopt the sample "as is" or make revisions to their existing form, save the

---

<sup>9</sup>This estimate is based on the assumption that 72 percent of regulated contractor companies have greater than 100 employees and will likely use a web-based application system.

invitation to self-identify and incorporate the document in the contractor's application form. This burden estimate should be considered in conjunction with the start-up costs associated with this rule. OFCCP allotted 18 hours in the section 503 final rule to modify human resources information systems or establish a process to comply with the rules' new data collection requirements. This is in addition to costs specified for incorporating the invitation to self-identify in the application process. Taken together, contractors will have over 21 hours to modify their existing application process. The burden for these contractors would be 49,676 hours (33,117 contractor companies x 1.5 hours = 49,676 hours). The remaining contractors would simply have to incorporate the invitation to self-identify in paper applications. OFCCP estimates this will take approximately 30 minutes. The burden for these contractors would be 6,440 hours (12,879 x 30 minutes/60 = 6,440 hours). The minimum cost for this provision is approximately \$2,101,103. If all contractors used a web-based application the one-time burden of preparing the form and making the IT changes for this provision is 68,994 hours (45,996 contractor companies x 90 minutes/60 = 68,994 hours). The maximum cost for this provision is \$2,583,328.

Assuming there are 251,300 contractor establishments, or 67,919 contractor companies,<sup>10</sup> in OFCCP's jurisdiction, contractors working at the corporate level, will take 1.5 hours to review and retrieve existing sample invitations to self-identify, adopt the sample "as is" or make revisions to their existing form, save the invitation to self-identify and incorporate the document in the contractor's application form. The burden for these contractors would be 73,352 hours (48,901 contractor companies x 1.5 hours = 73,352 hours). The remaining contractors would simply have to incorporate the invitation to

---

<sup>10</sup> OFCCP utilized the same ratio (approximately 3.7) of parent companies to number of establishments from the EEO-1 data to determine that among the universe of 251,300 establishments there are approximately 67,919 Federal contractor companies

self-identify in paper applications. OFCCP estimates this will take approximately 30 minutes. The burden for these contractors would be 9,509 hours (19,017 contractor companies x 30 minutes/60 = 9,509 hours). The minimum cost for this provision would be approximately \$3,102,510.

If all contractors used a web-based application the one-time burden of preparing the form and making the IT changes for this provision is 101,879 hours (67,919 contractor companies x 90 minutes/60 = 101,879 hours). The maximum cost for this provision would be approximately \$3,814,616.

Applicants for available positions with covered Federal contractors will have a minimal burden complying with section 60-741.42(a) in the course of completing their application for employment with the contractor. Section 60-741.42(a), on pre-offer self-identification, requires contractors to invite all applicants to self-identify whether or not they are an individual with a disability. OFCCP estimates that there will be a minimum of 15 applicants per job vacancy for on average 15 vacancies per year. OFCCP further estimates that it will take applicants approximately 5 minutes to complete the form. The burden for this provision is 3,211,406 hours (171,275 contractor establishments x 15 listings x 15 applicants x 5 minutes/60 = 3,211,406 hours). The minimum costs for this provision is \$96,695,442. OFCCP estimates that there will be a maximum of approximately 33 applicants per job vacancy for on average 15 vacancies per year per establishment. OFCCP further estimates that it will take applicants approximately 5 minutes to fill out the self-identification form. The burden for this provision is 7,065,093 hours (171,275 contractor establishments x 15 listings x 33 applicants x 5 minutes/60 = 7,065,093 hours). The maximum costs for this provision would be \$212,729,213.

Assuming that 251,300 establishments are impacted by the final rule, the minimum burden for this provision would be 4,711,875 hours (251,300 contractor establishments x 15 listings x 15 applicants x 5 minutes/60 = 4,711,875 hours). The minimum costs for this provision would be \$141,874,556. OFCCP estimates that there will be a maximum of approximately 33 applicants per job vacancy for on average 15 vacancies per year per establishment. OFCCP further estimates that it will take applicants approximately 5 minutes to fill out the self-identification form. The burden under this scenario would be 10,366,125 hours (251,300 contractor establishments x 15 listings x 15 applicants x 5 minutes/60 = 10,366,125 hours). The costs would be \$312,124,024.

Commenters also expressed concern about the proposed requirement to anonymously survey all employees to provide an opportunity to voluntarily self-identify as an individual with a disability. Commenters were particularly concerned about the administrative costs related to this provision. A few commenters suggested that complying with this requirement would cost thousands of dollars. These commenters emphasized the costs related to conducting the survey, securely maintaining the data, or consulting with an outside entity to administer the survey. Several commenters noted that the information would lack any value because it would be highly unreliable.

The final rule, at § 60-741.42(c), requires contractors to invite each of their employees to self-identify as an individual with a disability during the first year it becomes subject to the requirements of this section, and at five year intervals, thereafter. At least once during the years between each invitation, contractors must remind their employees that they may voluntarily update their disability status at any time. As noted

earlier, the invitation to self-identify is a critical component to allowing contractors, and subsequently OFCCP, to collect valuable, targeted data on the number of individuals with disabilities in the contractors' workforce. Furthermore, inviting self-identification on a periodic basis will enable contractors to capture employees who may become disabled after their hire date or may feel more comfortable self-identifying once he or she has been employed for some time. Contractors will incur the costs of the invitation essentially every other year.

In light of the various comments raised regarding the burden associated with this requirement, the final rule revises the burden estimate for this provision. The contractors' employees will be asked to self-identify utilizing the same "Voluntary Self-Identification of Disability" form provided by OFCCP to be used at the pre-offer and post-offer invitation. Therefore, the time needed by employees to review and complete the form for the voluntary self-identification should be nominal. The form will be simple, written plainly, and will provide employees the option of selecting between one of two identification options.

The employee invitation to self-identify does not require creating an entirely new database or methodology for capturing employee data. Nor does this requirement necessitate procuring an outside consultant to administer this invitation. Rather, OFCCP envisions that this process will require a dedicated period of time during which contractors will enable existing employees to voluntarily self-identify as an individual with a disability using the same "Voluntary Self-Identification of Disability" form mentioned previously. Contractors can also track the data in the same manner that they use for other required invitations to self-identify.

However, OFCCP acknowledges that this process may take longer than the 5 minutes estimated by the NPRM. The final rule estimates that it will take contractors 1.5 hours to conduct the invitation to self-identify. This includes the time needed to develop communications regarding the invitation, distribute communications, and collect and track self-identification forms. OFCCP believes this process will become much more streamlined over time and will likely require significantly less than 1.5 hours in subsequent years. The estimated burden for this provision is 256,913 hours (171,275 contractor establishments x 90 minutes/60 = 256,913 hours). The approximate cost of this provision is \$9,619,542.

Assuming there are 251,300 establishments impacted by the final rule, the burden for this provision would be 376,950 hours (251,300 contractor establishments x 5 minutes/60 = 376,950 hours). The total cost of the provision would be \$14,114,063.

Contractor employees will have to spend some time reviewing and/or completing the survey. There are approximately 27,400,000 Federal contractor employees. OFCCP estimates that employees will take 5 minutes to complete the self-identification form. The burden for this provision is 2,283,333 hours (27,400,000 employees x 5 minutes/60 = 2,283,333 hours). Utilizing Bureau of Labor Statistics data in the publication “Employer Costs for Employee Compensation” (September 2011), which lists an average total compensation for all civilian workers as \$30.11 per hour, the cost of this provision would be \$68,751,157.

OFCCP further estimates that it will take contractors 15 minutes to maintain self-identification forms. This time includes either manually storing the forms in a filing cabinet or saving them to an electronic database. The burden for this provision is 42,819

hours (171,275 contractor establishments x 15 minutes/60 = 42,819 hours). The approximate cost of this provision is \$1,603,263.

Assuming there are 251,300 establishments impacted by the final rule, the burden for this provision would be 62,825 hours (251,300 contractor establishments x 15 minutes/60 = 62,825 hours). The cost for this provision would be \$2,352,344.

5. Section 60-741.44 Required contents of the affirmative action program

Paragraph (a): Affirmative action policy statement

Section 60-741.44(a) of the final rule clarifies the contractor's duty to make the equal opportunity policy statement accessible to all employees. The final rule revises the parenthetical at the end of the sentence by replacing the outdated suggestion of "hav[ing] the notice read to a visually disabled person" as an accommodation with the suggestion to provide Braille, large print, or other versions that allow persons with disabilities to read the notices themselves. It also requires the policy statement to indicate the top United States executive, such as the Chief Executive Officer (CEO) or the President of the United States Division of a foreign company, who supports the contractor's affirmative action program. The NPRM estimated that it would take contractors 10 minutes to receive requests for accommodation, provide the document in an alternative format, and maintain records of compliance. Some commenters expressed concern that contractors would have a significant burden making the affirmative action policy available in multiple formats to accommodate various disabilities.

Upon further consideration, OFCCP determines that there is no additional cost for this provision in the final rule. The nondiscrimination requirements of OFCCP's existing regulations require contractors to provide reasonable accommodation. See 41 CFR 60-

741.21(f)(1). This modification simply updates the example of a possible accommodation that contractors may provide to a visually impaired person, and does not impose a new obligation on contractors. Similarly, no burden is associated with providing more specificity to the existing requirement that the contractor indicate the CEO's "attitude on the subject matter."

Paragraph (b): Review of personnel processes

Section 60-741.44(b) currently requires contractors to periodically review personnel processes to ensure that they do not screen out individuals with disabilities. The NPRM proposed requiring contractors to conduct this review annually and mandated specific steps contractors must take during the review, including: (1) identifying the vacancies and training programs for which protected applicants and employees were considered; (2) providing a statement of reasons explaining the circumstances for rejecting individuals with disabilities for vacancies and training programs and a description of considered accommodations; and (3) describing the nature and type of accommodations for individuals with disabilities who were selected for hire, promotion, or training programs. The NPRM did not assign burden for identifying vacancies and training programs since these provisions mirrored proposed requirements in OFCCP's VEVRAA NPRM, 76 FR 23358 (April 26, 2011). The NPRM estimated that it would take contractors 30 minutes to provide a statement explaining the reasons for rejecting individuals with disabilities for vacancies and training programs. Finally, the NPRM estimated that it would take 30 minutes for contractors to describe accommodations for individuals with disabilities who were selected for hire, promotion, or training programs.



Several commenters noted that proposed § 60-741.44(b) would create a significant burden and costs on contractors. Commenters asserted that the proposed provision would require contractors to create documents related to thousands of employment transactions per year. Commenters also asserted that OFCCP's estimate of 30 minutes to develop these records was too low. Several commenters provided their own estimates that were significantly higher than those proposed by OFCCP. In response to these concerns, OFCCP does not adopt the proposal as drafted in the NPRM, and the final rule retains the existing language in § 60-741.44(b). Therefore, there is no new burden associated with this provision.

The NPRM also proposed requiring contractors to ensure that its use of information and communication technology is accessible to applicants and employees with disabilities. Some commenters objected to this provision, stating that it would be costly and time-consuming for contractors to ensure that all of its information and communication technology was fully accessible and up-to-date. The final rule clarifies the language in this section by stating that contractors must ensure that applicants and employees with disabilities have "equal access to its personnel processes, including those implemented through information and communication technologies." Further, contractors must provide "necessary reasonable accommodation to ensure applicants and employees with disabilities receive equal employment opportunity in the operation of personnel processes." Since contractors already have a duty to provide reasonable accommodations for individuals with disabilities, there is no new burden for this provision. See 41 CFR 60-741.21(f).

Paragraph (c): Physical and mental qualifications

The NPRM proposed requiring contractors to annually review all physical and mental job qualification standards and for contractors to document their annual review. The NPRM also proposed requiring the contractor to document those instances in which it believes that an individual would constitute a “direct threat” as understood under the ADA, as defined in these regulations, and to maintain the written statement as set forth in the recordkeeping requirement in § 60-741.80. The NPRM did not assign burden for the proposed provision since it mirrored requirements in section 60-300.44(c) of the VEVRAA proposed rule, 76 FR 23358 at 23417. Several commenters expressed concern with this provision. Commenters noted that annual review of all job qualifications and standards could cost some contractors thousands of dollars, especially larger contractors that may have thousands of job titles. Commenters recommended that OFCCP consider requiring the review less frequently. In order to minimize the burden, the final rule retains the existing language in 41 CFR 60-741.44 requiring periodic review of physical and mental job qualifications to ensure they do not screen out individuals with disabilities. Therefore, there is no new burden for this provision.

Paragraph (d): Reasonable accommodation to physical and mental limitations

The NPRM proposed requiring contractors to ensure that its electronic or online job application systems are compatible with assistive technology commonly used by individuals with disabilities, such as screen reading and speech recognition software. OFCCP determined that this requirement is more appropriately addressed in § 60-741.21(a)(6)(iii) as a part of the fundamental reasonable accommodations obligations of contractors. The existing regulations make clear that it is “unlawful for [a] contractor to

fail to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee.” 41 CFR 60-741.21(f). Further, the existing definition of “reasonable accommodation” includes “[m]odification or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such applicant desires.” 41 CFR 60-741.2(v)(1)(i). Since Federal contractors have a duty to ensure that individuals with disabilities who require assistive technology are able to use their job application process, the proposed language does not create any new burden on contractors. The proposal simply clarifies how contractors can meet their existing obligations. Therefore, there is no new burden for this provision.

Paragraph (f): Outreach and recruitment efforts

The NPRM proposed several revisions to § 60-741.44(f). The NPRM proposed requiring contractors to list all of their employment opportunities, with limited exceptions, with the nearest Employment One-Stop Career Center. The NPRM did not estimate any burden for this provision since it mirrored an existing VEVRAA requirement. The proposed paragraph (f)(1)(ii) required contractors to enter into three linkage agreements with various entities to help recruit applicants with disabilities. The NPRM estimated that it would take contractors on average 3.2 hours to enter into these linkage agreements. The proposed paragraph (f)(1)(iv) required contractors to notify subcontractors, vendors, and suppliers of the company’s affirmative action policies. The NPRM estimated that it would take contractors 5 minutes to revise notices created under a similar proposed requirement in the VEVRAA NPRM to include references to the company’s nondiscrimination and affirmative action policies for individuals with disabilities. The proposed paragraph (f)(3) required contractors to conduct self-

assessments of their outreach and recruitment efforts. The NPRM estimated that it would take contractors 30 minutes to conduct an assessment of outreach and recruitment in conjunction with correlating assessments under EO 11246 and VEVRAA. Finally, the proposed paragraph (f)(4) clarified the contractor's recordkeeping obligations with regard to these outreach and recruitment efforts.

Several commenters expressed concern regarding the potential burden of the proposed revisions to § 60-741.44(f). Commenters noted that submitting job listings to Employment One-Stop Career Centers in the manner and format required by the center would require a significant expenditure of time. Commenters further noted that it would take much longer than OFCCP estimated to develop meaningful relationships with recruitment entities through linkage agreements. Further, some larger contractors with multiple establishments could be required to enter into hundreds of different linkage agreements. Commenters stated that a less burdensome approach would be for OFCCP to create a job bank that would enable Federal contractors to centrally post all of their job listings to promote recruitment of individuals with disabilities. Other commenters objected to the burden created by the five-year recordkeeping requirements. In response to these concerns, the final rule eliminates the proposed requirements to list all job opportunities with the nearest Employment One-Stop Career Center and enter into linkage agreements. The final rule retains the existing language of § 60-741.44(f), which requires that the contractor undertake "appropriate outreach and positive recruitment activities," and provides a number of suggested resources that contractors may utilize to carry out this general recruitment obligations. Therefore, there is no new burden for these provisions.

The final rule adopts the requirement for contractors to send written notification to subcontractors, vendors, and suppliers of the company's affirmative action policy. Section 60-300.44(f)(1)(ii) of the VEVRAA final rule also requires contractors to send written notification of the company policy related to its affirmative action efforts to all subcontractors, including subcontracting vendors and suppliers. OFCCP therefore expects that contractors will send a single, combined notice, informing subcontractors, vendors and suppliers of their VEVRAA and section 503 policies. Accordingly, OFCCP determined that there is no additional burden for this provision.

Paragraph (f)(3) of the NPRM required contractors to annually review their outreach and recruitment efforts to determine whether they were effective and document its review. Several commenters stated that this requirement would be unduly burdensome and would result in little benefit to contractors' affirmative action efforts. Commenters also stated that OFCCP's estimate of the time required for the review was too low. Commenters offered their own estimates that were significantly higher than that proposed by OFCCP.

Section 60-741.44(f)(3) of the final rule adopts this requirement as proposed. OFCCP expects that contractors will conduct this assessment in conjunction with the correlating assessments required under EO 11246 and VEVRAA. Further, OFCCP believes that if a contractor has been complying with its recruitment, outreach, data collection, and recordkeeping responsibilities throughout the affirmative action program year, as well as its general obligation under § 60-741.40(c) to review and update its affirmative action program on an annual basis (which includes its outreach and recruitment efforts, see § 60-741.44(f)), it will take an average of 30 additional minutes

for the contractor to conduct the specific effectiveness assessment of its outreach and recruitment efforts, which would include a simple comparison of the annual raw data on applicants and hires that contractors collect pursuant to §60-741.44(k) to previous years' data, as well as their hiring benchmark, and determining in light of these numbers and any other relevant circumstances whether adjustments in their outreach efforts is necessary. OFCCP estimates that 1 percent of contractors are first-time contractors during an abbreviated affirmative action program year and will be unable to complete the review. The recurring burden for this provision is 84,781 hours (169,562 contractor establishments x 30 minutes/60 = 84,781 hours). The estimated cost for this provision is \$3,174,438.

Assuming that 251,300 establishments would be impacted by the final rule, the burden for this provision would be 124,394 hours (248,787 contractor establishments x 30 minutes/60 = 124,394 hours). The cost for this provision would be \$4,657,641.

Section 60-741.44(f)(4) of the final rule requires contractors to document all the outreach and recruitment activities they undertake to comply with § 60-741.44(f) and retain these documents for a period of 3 years. Under the existing regulations, contractors are required to establish meaningful outreach and recruitment contacts. Consequently, contractors' outreach and recruitment should already be the subject of some documentation. This documentation may take several forms. It may include, for example, the numbers and types of outreach and recruitment events, the targeted groups or types of participants for each event, the dates or timeframes, location of the events, and who conducted and participated in the outreach and recruitment on behalf of the contractor.

OFCCP estimates that it will take contractors 10 minutes to maintain the outreach and recruitment documentation that would typically be generated as a result of their obligations pursuant to other provisions in the regulations. This does not include any additional time to make the software configuration needed to tell the contractor's computer system to store data for an additional year, as this burden was previously accounted for in the VEVRAA final rule's burden analysis of § 60-300.80(b). Therefore, the recurring burden for this provision is 28,546 hours (171,275 contractor establishments x 10 minutes/60 = 28,546 hours). The approximate cost for this provision is \$1,068,842. Assuming there are 251,300 contractor establishments impacted by the final rule, the burden for this provision would be 41,833 hours (251,300 contractor establishments x 10 minutes/60 = 41,833 hours). The cost for this provision would be \$1,568,229.

Paragraph (g): Internal dissemination of affirmative action policy

The NPRM proposed requiring the contractor to take several specific actions to disseminate its affirmative action policy, including incorporating the affirmative action policy in company policy manuals, informing all applicants and employees of the contractor's affirmative action obligations, and conducting meetings with management and company leadership to ensure they are informed about the contractor's obligations. The NPRM also proposed requiring contractors to hold meetings with employees at least once a year to discuss the section 503 affirmative action policy. The NPRM estimated that contractors would have a one-time burden of 20 minutes to develop the employee orientation presentation on the company's affirmative action requirements and an additional burden of 5 minutes to conduct the presentation. The NPRM further estimated that it would take contractors 30 minutes to disseminate the equal employment policy to

any entity that the contractor has a collective bargaining agreement with and 5 minutes to maintain records of compliance with § 60-741.44(g).

OFCCP received several comments asserting that the agency underestimated the amount of time it would take to comply with the provision. One commenter provided its own estimates from an internal survey of companies that estimated compliance times ranging from 5 to 20 hours. The commenter further asserted that OFCCP failed to consider the number of meetings required or coordination with the internal communications and web services to disseminate the policy. Finally, commenters stated that OFCCP underestimated the costs of this provision by failing to account for the cost of staff time to attend the meetings. In response to these concerns, the final rule does not incorporate the requirement to have contractors conduct meetings with management and all other employees at least once a year to discuss the section 503 affirmative action policy.

The final rule adopts the requirement to include the affirmative action policy in the contractor's policy manual or otherwise make it available to its employees. The existing regulations currently require contractors to develop some internal procedure to communicate to employees its affirmative action obligation to employ and advance in employment individuals with disabilities. See 41 CFR 60-741.44(g)(1). The final rule simply clarifies that one of the means by which contractors can do that is by including this in the policy manual. The final rule also gives contractors the flexibility to disseminate the policy by another means, which can include the method they are currently using to comply with the law. Therefore, there is no new burden related to this provision.



The remaining elements that were required in the NPRM and/or were suggested in the existing rule remain in paragraph (g)(3) of the final rule as actions that the contractor is suggested to take, with the exception of the recordkeeping provision, which has been eliminated.

#### Section 60-741.44(h) Audit and Reporting System

Section 60-741.44(h)(1)(vi) of the final rule requires contractors to document the actions taken to comply with the obligations of paragraphs (h)(1)(i) through (v) of this section, and retain these documents as employment records subject to the recordkeeping requirements of § 60-741.80. Seven commenters stated that the proposed requirement would impose a burden and require new processes for tracking and recordkeeping.

This section is adopted in the final rule as proposed. Under the existing rule, most contractors should document and maintain their analysis of the affirmative action program as a normal part of their review and assessment process. Compliance officers report that, on request, they review or are provided a range of documents related to the analysis including, for example, reports, summaries and data. In many regards, this provision merely acknowledges and formalizes a current contractor practice. OFCCP estimates that it will take contractors 10 minutes to document the actions taken to comply with § 60-741.44(h) and retain those documents. The recurring burden for this provision is 28,546 hours ( $171,275 \text{ contractor establishments} \times 10 \text{ minutes} = 856,375/60 = 28,546$  hours). The estimated cost of this provision is \$1,068,842. Assuming there are 251,300 establishments impacted by the final rule, the burden for this provision would be 41,833 hours ( $251,300 \text{ contractor establishments} \times 10 \text{ minutes}/60 = 41,833$  hours). The cost for this provision would be \$1,568,229.

Paragraph (i): Responsibility for implementation

The NPRM proposed requiring contractors to identify the official responsible for affirmative action activities on all internal and external communications regarding the contractor's affirmative action program. In the current regulation, this disclosure is only suggested. Upon further review, OFCCP does not believe that the benefit of this suggested change outweighs the potential burden that it would place on contractors. Accordingly, the language in the existing regulation that contractors should, but are not required to, take this step is retained. Therefore, there is no new burden for this provision.

Paragraph (j): Training

Section 60-741.44(j) of the existing regulation requires training for all personnel involved in recruitment, hiring and promotion decisions to ensure that the contractor's affirmative action program is implemented. The NPRM proposed revising this paragraph to outline specific topics that must be covered in the training. The NPRM also proposed requiring contractors to make specific records and maintain these records, along with all written or electronic training materials used. Since this provision mirrored a similar proposed requirement in the VEVRAA NPRM, the section 503 NPRM estimated that it would take contractors 40 minutes to develop the section 503 aspects of the training and 20 minutes to present it.

Several commenters raised concerns regarding the burden that the training requirements would place on contractors. Commenters noted it would take hours to create their own training modules to adequately cover all of the information required by the proposed rule. Commenters suggested that OFCCP provide a training module to

alleviate the burden of this provision to contractors. Commenters further noted that OFCCP did not adequately assess the cost of the provision since the NPRM did not include the cost of staff time to participate in the trainings.

In consideration of these comments, the final rule does not incorporate the portion of the proposed rule listing specific training items that must be covered by contractors or the specific recordkeeping requirement. Accordingly, no new burden is created by this provision in the final rule.

#### Paragraph (k): Data Collection Analysis

The NPRM proposed requiring contractors to make several quantitative measurements and comparisons regarding referrals, applicants and hires with disabilities and job fill ratios. The NPRM estimated that it would take contractors 1 hour to conduct the required data analysis.

Several commenters expressed concern about the burden associated with this proposal. Commenters were particularly concerned about the requirement to track and analyze referral data since applicants often do not indicate whether they were referred by a state employment service delivery system on their applications. Commenters further asserted that the newly required data collection and analysis would require expensive modifications to existing HRIS. Some commenters noted that the requirement would place a substantial burden on small businesses or contractors that do not have sophisticated electronic databases. One commenter noted that some contractors would be required to manually search paper records and compile data using pencil and paper. Commenters that were opposed to this requirement further noted that the results of the

analysis would be questionable in light of the concerns regarding reliability of self-identification data.

The final rule adopts the requirement to collect and maintain data regarding applicants and hires with disabilities. The final rule eliminates the requirement for contractors to collect, maintain and analyze referral data on individuals with disabilities. The final rule also does not require contractors to calculate applicant, hiring, and job fill ratios in this provision. This eliminates many of the concerns commenters raised regarding this paragraph, and also serves to significantly decrease the burden on contractors. OFCCP also included a substantial initial capital or start-up cost estimate for contractors to put systems in place to efficiently track the data.

OFCCP disagrees with the assertion that a significant number of establishments would have to complete this analysis using paper and pencil. Feedback received from public comments regarding the concerns over costs for modifying human resources information systems further indicate that most contractors will have the capability to conduct the required calculations electronically. There are spreadsheet databases that are commonly used by businesses and have the capability to complete the kind of analysis required by § 60-741.44(k) in a manner of minutes. Contractors using this basic kind of tracking database may need to spend some time entering data by hand. However, the amount of time spent should be minimal, as this section only requires the calculation of a few workforce-wide comparisons regarding applicants and hires with disabilities.

Further, OFCCP clarifies the only “new” items in this section are those pertaining to the self-identification applicant and hiring data. The burden for collecting and maintaining the applicant data is already partially calculated under § 60-741.42(a); the

burden associated with this section is largely just totaling the raw data on applicants.

OFCCP estimates that it will, at a minimum, take contractors 25 minutes to tabulate the applicant data using an electronic database that is integrated with the contractors' human resources information database where the data is typically stored. In addition, we estimate that an additional 10 minutes is required to electronically or otherwise store the records (e.g., the report or other written documentation generated by the calculations that explain the methodology, the data used, and the findings and conclusions; the data used to conduct the calculations for subsequent validation of the results; and other material used by the contractor for the calculations). The recurring burden for this provision is 99,910 hours (171,275 contractor establishments x 35 minutes/60 = 99,910 hours). The minimum cost for this provision is approximately \$3,740,926.

However, some commenters noted that companies may have to calculate this information manually. Commenters stated that these calculations could take more than 6 hours. OFCCP declines to adopt the 6 hour estimate for manual calculations in large part because the estimate and the requirements of this section are significantly scaled back from the proposed rule, as the final rule does not require contractors to tabulate referral data. Accordingly, starting with the 6 hour estimate and scaling it back given the reduced burden of the final rule, OFCCP estimates that establishments without web-based application systems would take approximately 3 hours to tabulate the information required by this section. The burden for these establishments would be 102,765 hours (34,255 contractor establishments x 3 hours= 102,765 hours). The remaining establishments would incur the 35 minute burden, for a total of 79,928 hours (137,020

establishments x 35 minutes/60 = 79,928 hours). The maximum cost for this provision is approximately \$6,840,550.

Assuming there are 251,300 contractor establishments impacted by the final rule, OFCCP estimates that it will, at a minimum, take contractors 25 minutes to tabulate the applicant data using an electronic database and an additional 10 minutes to electronically or otherwise store the records (e.g., the report or other written documentation generated by the calculations that explain the methodology, the data used, and the findings and conclusions; the data used to conduct the calculations for subsequent validation of the results; and other material used by the contractor for the calculations). The recurring burden for this provision would be 146,592 hours (251,300 contractor establishments x 35 minutes/60 = 146,592 hours). The minimum cost for this provision would be approximately \$5,488,802.

The NPRM also proposed requiring contractors to maintain that data for 5 years. In response to the comments, the final rule reduces the record retention requirement for § 60-741.44(k) to 3 years. No new software needs are anticipated, however, a software switch or configuration may be required to tell the system to retain the records for the additional 1 year (or an additional 2 years in the case of a smaller contract or contractor). According to an IT professional, this is a simple configuration and should take about 15 minutes to execute. No new burden is added because the change required by the recordkeeping provisions of §§ 60-741.44(f)(4) of this final rule and 60-300.(80)(b) of the VEVRAA final rule include this IT change.

OFCCP also solicited comments regarding adding a reporting requirement that would contain the measurements and computations required by proposed paragraph (k),

and including the percentage of applicants, new hires, and total workforce for each EEO-1 category. The majority of comments on this proposal asserted that the requirement would impose an unnecessary burden. Several commenters stated that OFCCP did not provide any support or justification for proposing the requirement. As noted in the Section-by-Section analysis, OFCCP weighed the utility of this reporting requirement and found that it may create unnecessary burden. Therefore, the final rule does not adopt the proposed reporting requirement.

6. Section 60-741.45 Utilization Goal

The NPRM proposed a new § 60-741.46 that would establish a single, national utilization goal for individual with disabilities. The proposed § 60-741.46 also outlined steps contractors must take to determine whether they have met the utilization goal and develop and execute “action-oriented programs” to correct any identified problems related to attaining the goal. Finally, the NPRM sought comment on whether there should be a sub-goal for individuals with targeted disabilities. The NPRM estimated that it would take 5 minutes of recordkeeping time per contractor to document the goal. The NPRM further estimated that it would take contractors 1 hour in the first year to determine whether the company has met the goal.

Several commenters stated that establishing a utilization goal for individuals with disabilities would be extremely burdensome. Commenters noted that the proposed provision would require a substantial amount of staff time to research and collect the data for the utilization analysis. One commenter noted that the utilization goal would be particularly onerous for larger contractors as the requirement could result in creating

thousands of new goals. The burden would be doubled if contractors had to establish a sub-goal.

The final rule adopts the proposed utilization goal of 7 percent, now § 60-741.45 of the final rule. As noted in the preamble, the long-term, employment disparities between individuals with and without a disability necessitate a quantifiable means by which to assess whether contractors are achieving equal employment opportunity. Further, OFCCP received significant support for the goal from commenters. The disability community and those representing their interests, in particular, were strongly in support of this new requirement. For these commenters, affirmative action efforts under section 503 have been largely meaningless without, among other things, measurable goals for the employment of people with disabilities.

OFCCP disagrees with the assertion that this provision would require contractors to create thousands of new goals. The final rule establishes one goal that applies to all contractors and all different job groups. Section 60-741.45 creates no obligation for contractors to independently create goals specific to their organization or any particular job group. Contractors will use the standard 7 percent goal when conducting their utilization analysis.

Individuals with disabilities make up 4.83 percent of the employed.<sup>11</sup> The section 503 rule establishes a utilization goal for employing individuals with disabilities of 7 percent. To meet the goal, OFCCP estimates that Federal contractors would hire an additional 594,580 individuals with disabilities. This amounts to an additional 2.37

---

<sup>11</sup> U.S. Census Bureau, 2011 American Community Survey. There are a variety of sources for this estimate. The Current Population Survey estimates a lower rate, 3.5 percent, and the Survey of Income and Program Participation estimates 9.4 percent.



employees per establishment or 8.75 employees per company.<sup>12</sup> Some of these new hires may require a reasonable accommodation. According to research conducted by the Job Accommodation Network (JAN), employers in the study reported that 57 percent of accommodations cost absolutely nothing. For the remaining 43 percent, the typical cost of providing a reasonable accommodation was approximately \$500.<sup>13</sup> Few employers, about 4 percent, reported incurring ongoing annual costs associated with providing accommodations. We estimate, in light of this information, that 219,338 disabled non-protected veterans may need accommodations with a total cost of \$114,770,291 in the year the target is met and \$48,524,879 in recurring costs.

A few commenters stated that one hour is not a sufficient amount of time to conduct the required utilization analysis. OFCCP also disagrees with this assertion. As noted earlier, supply and service contractors are already required to conduct a utilization analysis. See 41 CFR 60-2.15(a). These contractors should have some mechanisms in place to conduct this analysis efficiently. Furthermore, OFCCP has estimated a substantial amount of initial capital and start-up costs for contractors to put procedures in place for the annual analysis to be conducted efficiently. OFCCP also increased the estimate of the amount of time necessary to conduct the self-identification process, which will inform the utilization analysis. Therefore, the final rule estimates that, at a minimum, contractors will take 1 hour to conduct the utilization analysis. The burden for

---

<sup>12</sup> This assumes that there are 251,300 contractor establishments and 67,919 companies. Under an alternative scenario of 171,275 establishments and 46,291 companies, the additional number of disabled hires per establishment and company is 3.52 and 13.02, respectively.

<sup>13</sup> Job Accommodation Network, “Workplace Accommodations: Low Cost, High Impact,” Sept. 1, 2012. Accommodation and Compliance Series, <http://askjan.org/media/lowcosthighimpact.html> (last accessed Aug. 9, 2013).

this provision is 171,275 hours (171,275 contractor establishments x 1 hour = 171,275 hours). The minimum costs for this provision is \$6,413,015.

However, some commenters noted that companies may have to calculate this information manually. Utilizing data from the EEO-1 regarding the number of establishments with fewer than 100 employees, OFCCP estimates that 20 percent of establishments may have to conduct the analysis manually. These establishments would take approximately 3 hours to tabulate the information required by this section. The burden for these establishments would be 102,765 hours (34,255 contractor establishments x 3 hours = 102,765). The remaining establishments would incur the 1 hour burden, for a total of 137,020 hours (137,020 contractor establishments x 1 hour = 137,020 hours). The maximum cost for this provision is approximately \$8,978,223.

Assuming there are 251,300 contractor establishments impacted by the final rule and they all utilized some form of electronic system to conduct the analysis, the burden for this provision would be 251,300 hours (251,300 contractor establishments x 1 hour = 251,300 hours). The cost for this provision would be \$9,409,376. OFCCP estimates that 20 percent of these establishments may have to conduct the analysis manually. These establishments would take approximately 3 hours to tabulate the information required by this section. The burden would be 150,780 hours (50,260 contractor establishments x 3 hours = 150,780 hours). The remaining establishments would incur the 1 hour burden, for a total of 201,040 hours (201,040 establishments x 1 hour = 201,040 hours). The maximum cost for this provision would be approximately \$13,173,126.

OFCCP further estimates that it will take contractors an additional 10 minutes to maintain records of the utilization analysis. This simply requires filing away any records

created while conducting the analysis. The recordkeeping burden is 28,546 hours (171,275 contractor establishments x 10 minutes/60 = 28,546 hours). The total cost for this provision is \$1,068,836.

Assuming there are 251,300 establishments impacted by the final rule, the burden for this provision would be 41,833 hours (251,300 contractor establishments x 10 minutes/60 = 41,833 hours). The cost for this provision would be \$1,568,229. Section 60-741.45(e) requires contractors to make an assessment of whether any impediments to equal employment opportunity for individuals with disabilities exist. This assessment can be based on reviews currently required under §§ 60-741.44(b) (review of personnel processes), 60-741.44(f) (review of outreach and recruitment efforts), and 60-741.44(h) (audit of the affirmative action program). A new paragraph (f) entitled “Action-oriented programs” requires contractors to develop action-oriented programs when problem areas have been identified by the utilization analysis. These action-oriented programs may include the modification of personnel processes, alternative or additional outreach and recruitment efforts, and/or other actions designed to correct the identified problem areas and attain the established goal. The existing regulations require contractors to measure the effectiveness of the affirmative action program and correct any identified deficiencies. See 41 CFR 60-741.44(h). Therefore, there is no new burden created by paragraphs (f) or (e).

#### 7. Section 60-741.60 Compliance evaluations

Section 60-741.60 of the final rule allows OFCCP to request that contractors make documents available on or off-site during a compliance evaluation and establishes new procedures for pre-award compliance evaluations under section 503. Since

contractors are currently required to make documents available to OFCCP during a compliance evaluation, there is no additional cost for allowing OFCCP off-site access to documents. This provision simply affords OFCCP the opportunity to conduct reviews of relevant materials at any appropriate location. The newly created pre-award compliance evaluation requires no action by the contractor and only places a burden on the Federal contracting agency and OFCCP.

8. Section 60-741.80 Recordkeeping

The NPRM proposed requiring contractors to maintain records created pursuant to the proposed §§ 60-741.44(f)(4) and 60-741.44(k) for five years. Commenters stated this requirement was overly burdensome as contractors would be required to maintain a substantial amount of new records either physically or electronically for a longer period of time than required by the existing regulations.

Section 60-741.80 of the final rule requires contractors to maintain data pursuant to §§ 60-741.741(f)(4) (outreach and recruiting efforts) and 60-741.44(k) (applicant and hire data) for 3 years. OFCCP disagrees with the assertion that this requirement would create a need to secure substantial electronic or physical storage space to keep these records. For example, compliance with § 60-741.44(f)(4) can include material evidence that the contractor has attended recruiting events or other similar activities. Since contractors no longer need to maintain referral records, the recordkeeping burden of § 60-741.44(k) requirement is substantially reduced. The primary record contractors would have to maintain is the self-identification forms that the data analysis is based on. As such, there should be no need to secure substantial new storage space beyond what the contractor already maintains in its normal course of business to maintain these forms.

There is no additional burden assessed here because it is included in the estimates for §§ 60-741.44(f)(4) and 60-741.44(k). In those sections, we determined that no new software needs are anticipated, however, a software switch or configuration may be required to instruct the system to retain the records for the additional 1 year (or an additional 2 years in the case of a smaller contract or contractor).

9. Section 60-741.81 Access to records

Section 60-741.81 of the final rule requires contractors to specify all available records formats and allow OFCCP to select preferred record formats from those identified by the contractor during a compliance evaluation. Upon request, the contractor must provide OFCCP information about all format(s), including specific electronic formats, in which the contractor maintains its records and other information.

A few commenters objected to the requirement to provide records in formats OFCCP selects. The final rule clarifies this provision to make clear that contractors will not be required to invest time or resources creating records in a specific format, or creating a documented “list” of the formats in which they have documents available. Rather, contractors merely need to inform OFCCP of the formats in which they maintain records and other information, and allow OFCCP to select the format(s) in which the records or other information will be provided.

10. Appendix A, Guidelines on a Contractor’s Duty to Provide Reasonable Accommodation

Appendix A includes several changes that reflect updated terminology and revisions made elsewhere in the regulations. These revisions create no new costs for contractors, therefore, there is no burden for Appendix A.

## 11. Appendix B – Developing Reasonable Accommodation Procedures

The NPRM proposed a new provision at § 60-741.45 that would require contractors to establish formal, written reasonable accommodation procedures. The proposed provision required including various elements in the reasonable accommodation procedures; disseminating the procedures to all employees; informing applicants of the reasonable accommodation procedures; training for all managers on the procedures; and documenting specific information regarding reasonable accommodation requests. The NPRM estimated the following related to this provision: 30 minutes to develop the reasonable accommodation procedures; 5 minutes for first-time contractors to designate a responsible official for implementing the procedures; 15 minutes to disseminate the procedures to employees; 2 hours to develop the training on the procedures; and an additional 5 minutes to maintain records of compliance with the provision.

Several commenters stated that the proposed § 60-741.45 was an overly burdensome requirement. Commenters expressed particular concern about the burden of providing written confirmation of reasonable accommodation requests and explanations of any denials of reasonable accommodation. Some commenters noted that the burden of this requirement would be enormous, such that it was difficult to even quantify how much time it would take to comply with this provision.

Upon further review, OFCCP does not believe that the benefit of this suggested change outweighs the potential burden that it would place on contractors. Therefore, the final rule creates a new Appendix B entitled Developing Reasonable Accommodation Procedures that provides specific guidance and sets forth recommended elements similar to those proposed in the NPRM that contractors may use when voluntarily establishing

written reasonable accommodation procedures. The final rule also adds a new paragraph (vi) to § 60-741.21(a)(6) that acknowledges that the development and use of written reasonable accommodation procedures is a best practice. However, it does not require that contractors develop such procedures. Therefore, no new burden is assessed for this provision.

## 12. Initial Capital or Start-up Costs

### Human Resources Information Systems Modifications

Several commenters noted that the new data collection requirements in the proposed rule would require modifications to existing HRIS. In order to estimate the start-up costs for the final rule, OFCCP considered what would be required to modify existing HRIS to track the number of applicants and hires that self-identify as an individual with a disability. Because contractors must already maintain information on their employees by race/ethnicity and sex, contractors should have some mechanism in place to track the newly required information. Further, the VEVRAA final rule requires contractors to make similar revisions to their HRIS to accommodate the new VEVRAA data collection requirements. OFCCP reasonably anticipates that contractors will make the HRIS changes necessitated by this final rule in conjunction with the analogous changes needed to comply with the VEVRAA final rule, resulting in increased efficiency and reduced burden.

The minimum costs for modifying HRIS is based on the estimate that 72 percent of contractors utilize this kind of electronic system.<sup>14</sup> Based on information from IT professionals, OFCCP estimates it would take each contractor company on average 18

---

<sup>14</sup> Utilizing EEO-1 data, OFCCP estimates that 72 percent of regulated contractor companies have greater than 100 employees and will likely use an electronic human resources system.

hours to make the needed systems modifications to track applicant and hiring information for individuals with disabilities. This includes IT and administrative professionals to make the changes. The estimated costs for these modifications are based on data from the Bureau of Labor Statistics in the publication “Employer Costs for Employee Compensation” (September 2011), which lists total compensation for a professional of \$47.21 per hour. Therefore, the minimum estimated burden for the capital and start-up costs is 599,706 hours (33,317 contractor companies x 18 hours = 599,706 hours). We calculate the total minimum estimated start-up costs as \$28,312,120 (599,706 x \$47.21/hour = \$28,312,120) or \$849 per establishment. Assuming all contractor companies utilize HRIS, the maximum estimated burden for modifying the systems is 827,928 hours (45,996 contractor companies x 18 hours = 827,928 hours). We calculate the total costs as \$39,086,480 (827,928 hours x \$47.21/hour = \$39,086,480).

Assuming there are 251,300 contractor establishments in OFCCP’s jurisdiction, or 67,919 companies, the minimum estimated burden for the capital and start-up costs would be 880,218 hours (48,901 contractor companies x 20 hours = 880,218 hours). The total minimum estimated start-up costs would be \$41,555,092 (978,020 hours x \$47.21/hour = \$41,555,092) or \$849 per parent company. Assuming all contractor companies utilize HRIS, the maximum burden would be 1,222,542 hours (67,919 contractor companies x 18 hours = 1,222,542 hours). We calculate the total maximum estimated start-up costs as \$57,716,208 (1,358,380 hours x \$47.21/hour = \$57,716,208) or \$849 per parent company.



## Operations and Maintenance Costs

OFCCP estimates that the contractor will have some operations and maintenance costs in addition to the burden calculated above.

### 60-741.42 Invitation to Self Identify

OFCCP estimates that the contractor will have some operations and maintenance cost associated with the invitations to self-identify. The contractor must invite all applicants to self-identify at both the pre-offer and post-offer stage of the employment process. Given the increasingly widespread use of electronic applications, any contractor that uses such applications to invite self-identification would not incur copy costs. However, to account for contractors who may still choose to use paper applications, we are including printing and/or copying costs. The final rule reduces the numbers of forms to one to make the self-identification process less paperwork intensive and to reduce costs. We also estimate an average copying cost of \$.08 per page. Assuming contractors using a paper-based application system, used 15 applications for an average of 15 listings per establishment, the minimum estimated total cost to contractors will be \$616,590 (34,255 contractor establishments x 225 copies x \$.08 = \$616,590). Assuming contractors using a paper-based application system, used 33 applications for an average of 15 listings per establishment, the maximum estimated cost to contractors will be \$1,356,498 (34,255 contractor establishments x 30 x \$.08 = \$1,356,498).

Assuming that 50,260 of 251,300 contractor establishments with a paper-based application system, used 15 applications for an average of 15 listings per establishment, the minimum estimated total cost to contractors will be \$904,680 (50,260 contractor establishments x 225 copies x \$.08 = \$904,680). Assuming contractors using a paper-

based application system, used 33 applications for an average of 15 listings per establishment, the maximum estimated cost to contractors will be \$1,990,296 (50,260 contractor establishments x 495 copies x \$.08 = \$1,990,296).

#### **D. Summary of Benefits**

As a result of this Final Rule, it is estimated that 594,580 individuals with disabilities could be hired in the first year alone.<sup>15</sup> There are tangible and intangible benefits from investing in the recruitment and hiring of individuals with disabilities. Among them are employer tax credits, access to a broader talent pool, an expanded pool of job applicants, access to new markets by developing a workforce that mirrors the general customer base, lower turnover based on increased employee loyalty, and lower training costs resulting from lower staff turnover.<sup>16</sup> According to the U.S. Business Leadership Network (USBLN), “corporate CEOs understand that it’s cost effective to recruit and retain the best talent regardless of disability.”<sup>17</sup> Broad public policy considerations also exist related to the decreased demand for and cost of social services as more people move into jobs and pay taxes.

#### **E. Conclusion**

OFCCP concludes in the final regulatory impact analysis that the costs of the final rule will range and likely exceed \$100 million annually. The variations in costs depend

---

<sup>15</sup> Individuals with disabilities make up 4.83 percent of the employed. The estimate is based on calculating the number of hires needed to reach the 7% goal in the first year, the estimated number of employees working for covered Federal contractors, and the number of contractor establishments covered by OFCCP jurisdiction. To reach the goal, 594,580 additional individuals with disabilities would be hired. This number also assumes that contractors will not exceed the goal.

<sup>16</sup> Job Accommodation Network, “Workplace Accommodations: Low Cost, High Impact,” Sept. 1, 2012. Accommodation and Compliance Series, <http://askjan.org/media/lowcosthighimpact.html> (last accessed Aug. 9, 2013).

<sup>17</sup> USBLN Disability at Work, and U.S. Chamber of Commerce, “Leading Practices on Disability Inclusion,” [http://www.usbln.org/pdf-docs/Leading\\_Practices\\_on\\_Disability\\_Inclusion.pdf](http://www.usbln.org/pdf-docs/Leading_Practices_on_Disability_Inclusion.pdf) (last accessed Aug. 9, 2013). The USBLN and Chamber report shares best practices from larger corporations for hiring and providing reasonable accommodations.

on the number of establishments impacted by the final rule. Costs will also vary by company depending on their existing infrastructure. We estimate that the lower end costs would be \$349,510,926 assuming that there are approximately 171,275 contractor establishments impacted by the final rule. The lower end estimate also relies on the assumption that many of these establishments have some form of electronic application and human resources information systems that would make complying with the rules requirements more efficient. The higher end estimate of \$659,877,833 assumes that there are 251,300 establishments impacted by the final rule. The higher end further assumes that a portion of those contractors, primarily smaller ones with fewer employees, would have to expend more personnel time complying with the rules requirements. The recurring costs in years contractors do not invite all employees to identify as an individual with a disability will range from \$162,371,816 to \$395,258,387. The recurring costs in year contractors do invite all employees to identify as an individual with a disability will range from \$242,345,778 to \$480,476,442. Therefore, the rule will have a significant economic impact. However, OFCCP believes that the final rule will have extensive benefits for individuals with disabilities who are prospective and current employees of Federal contractors and Federal contractors. As such, OFCCP concludes that the benefits of the rule justify the costs.

#### **Regulatory Flexibility Act and Executive Order 13272 (Consideration of Small Entities)**

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 et seq., requires agencies promulgating rules to consider the impact they are likely to have on small entities. More specifically, the RFA requires agencies to “review rules to assess and take

appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations.” If a rule is expected to have a “significant economic impact on a substantial number of small entities,” the agency must prepare an initial regulatory flexibility analysis (IRFA). If, however, a rule is not expected to have a significant economic impact on a substantial number of small entities, the agency may so certify, and need not perform an IRFA.

Based on the analysis below, in which OFCCP has estimated the impact on small entities that are covered contractors of complying with the requirements contained in this rule, OFCCP certifies that this rule will not have a significant economic impact on a substantial number of small entities.

In making this certification, OFCCP first determined the approximate number of small regulated entities that would be subject to the rule. OFCCP’s review of the FY 2009 EEO-1 data revealed that the final rule directly impacts 20,490 Feral contractors with between 50 and 500 employees.<sup>18</sup> OFCCP analyzed the number of small entities impacted by the rule as compared to the agency’s entire universe of regulated entities of approximately 45,996 Federal contractors.<sup>19</sup> OFCCP estimates that approximately 44 percent of the total number of Federal contractors, or 20,490, are small entities with between 50 and 500 employees. OFCCP further refined the analysis to compare the impacted small entities to just the universe of 21,541 small entities in OFCCP’s

---

<sup>18</sup> The Small Business Administration (SBA) Office of Advocacy reports that there are 27.4 million small entities in the United States. Since Federal contracts are not limited to specific industries, OFCCP assessed the impact of this final rule on small entities overall. If OFCCP used this approach, the final rule will impact less than .07% of non-employer firms and .34% of employer firms nationwide.

<sup>19</sup> The EEO-1 data base separately identifies contractor entities (companies) and the facilities that comprise them. The FPDS –NG data base, by contrast, identifies contractor facilities, but does not identify the larger entities of which they are a part. OFCCP utilized the ratio (approximately 3.7) of parent companies to number of establishments from the EEO-1 data to determine that among the universe of 171,275 contractor establishments there are approximately 45,996 Federal contractor companies.

jurisdiction. Under this scenario, approximately 95 percent of small entities would be impacted by the requirements of the rule. Utilizing these comparisons, the final rule may have an impact on a substantial number of small entities.

OFCCP has determined, though, that the impact on entities affected by the final rule would not be significant. In order to further inform our analysis of the economic impact of this rule on small entities, we considered the cost impact of the rule on 2 sizes of entities. We estimated the compliance costs of the final rule on Federal contractors with 50 to 100 employees and 100 to 500 employees. Contractors with less than 50 employees would not be subject to the new requirements affirmative action requirements in subpart C of the rule. OFCCP's analysis of the impact on small entities compared the estimated cost of compliance with the final rule for small entities to the estimated annual receipts of these entities as provided by the SBA. If the estimated compliance costs are less than 1 percent of the estimated revenues, OFCCP considers it appropriate to conclude that there is no significant economic impact.<sup>20</sup>

### **Contractors with 50-100 Employees**

We estimate the first-year cost of this rule to a contractor with 50 to 100 employees to be approximately \$3,318. The first-year cost of the rule is the year with the highest compliance cost as the contractor is incurring the start-up costs of the rule. This primarily includes the time contractors will expend reviewing the new requirements of

---

<sup>20</sup> Id. at 18 (impact could be significant if the costs of compliance with the rule “exceeds 1% of the gross revenues of the entities in a particular sector.”)

the rule and costs for reasonable accommodations for approximately five newly hired individuals with disabilities.<sup>21</sup>

In order to estimate the cost of this rule on an entity with 50 to 100 employees, we are applying the same type of compliance cost structure previously described in the above cost analysis. However, for this small contractor, we assume they would have a manual application process and not require costly human resources information systems changes. We further assume these contractors would expend: 3 hours manually conducting the data analysis required by the new 41 CFR 60-741.44(k); 3 hours conducting the utilization analysis; 4 hours having a manager review the new requirements of the rule; and incur approximately \$40 in copying costs in order to print out the newly required pre-offer invitation to self-identify for applicants. This also includes a cost of approximately \$2,500 for providing reasonable accommodation to at least five newly hired individuals with disabilities.<sup>22</sup>

Utilizing data from the SBA Office of Advocacy regarding average receipts for firms, OFCCP determined that entities with 50 to 100 employees average receipts of approximately \$14,079,844 per year.<sup>23</sup> The \$3,318 costs of compliance with the final

---

<sup>21</sup> Individuals with disabilities make up 4.83 percent of the employed. The utilization goal under the final rule is 7 percent. To close the gap, federal contractors would need to hire an additional 594,580 disabled people. This amounts to an additional 2.37 employees per establishment or 8.75 employees per company. Some of these new hires may require reasonable accommodation. According to research conducted by the Job Accommodation Network (JAN), employers in the study reported that a high percentage (57%) of accommodations cost absolutely nothing. For the remaining 43%, the typical cost of providing a reasonable accommodation was approximately \$500.

<sup>22</sup> To close the current gap that exists between the target rate of employment for disabled individuals and the actual rate, firms would need to hire an additional 594,580 disabled individuals. This amounts to an additional 2.37 employees per establishment or 8.75 employees per company. This assumes 251,300 establishments and 67,919 companies. Under an alternative scenario of 171,275 establishments and 46,291 companies, the additional number of disabled hires per establishment and company is 3.52 and 13.02, respectively. According to research conducted by the Job Accommodation Network (JAN), employers in the study reported that a high percentage (57%) of accommodations cost absolutely nothing. For the remaining 43%, the typical cost of providing a reasonable accommodation was approximately \$500.

<sup>23</sup> In order to calculate this figure, OFCCP averaged the total receipts of firms with 50 to 99 employees

rule in the first year would be approximately .02 percent of the average value of receipts for these entities. Therefore, there is not a significant economic impact on contractors with 50 to 100 employees.

### **Contractors with 100-500 Employees**

We estimate the first-year cost of this rule to contractors with 100 to 500 employees to be approximately \$5,197. The first-year cost is the year with the highest compliance cost as the contractor is incurring the start-up costs of the rule. The start-up for contractors with 100 to 500 employees primarily includes modifying any existing web-based application and human resources information systems to include the pre-offer invitation to self-identify, becoming familiar with the new requirements of the rule, and costs for reasonable accommodations for approximately five newly hired individuals with disabilities.

In order to estimate the cost of this rule on contractors with 100 to 500 employees, we are applying the same type of compliance cost structure previously described in the above cost analysis. However, for this small contractor, we assume they may incur more costs analyzing data, establishing benchmarks, and modifying human resources information systems. Specifically, we assume these contractors would expend: 3 hours manually conducting the data analysis required by the new 41 CFR 60-741.44(k); 3 hours conducting the utilization analysis; 4 hours having a manager review the new requirements of the rule; and incur approximately \$40 in copying costs in order to print out the newly required pre-offer invitation to self-identify for applicants. We further

---

provided by the SBA, Office of Advocacy. See Firm Size Data, [available at www.sba.gov/advo/research/data.html#us](http://www.sba.gov/advo/research/data.html#us). Since the data was issued in 2007, OFCCP utilized a compound 2007-2008 Consumer Price Index inflation rate equaling 6.8% ( $1.0285 \times 1.0385$ ) to calculate the 2009 average receipts of \$14,079,844 per year.

assume these contractors will spend approximately \$850 modifying their human resources information systems to accommodate the new pre-offer invitation to self-identify. This also includes a cost of approximately \$2,500 for providing reasonable accommodation to at least five newly hired individuals with disabilities.

Utilizing data from the SBA Office of Advocacy regarding average receipts for firms, OFCCP determined that entities with 100 to 500 employees average receipts of approximately \$43,547,170 per year.<sup>24</sup> The \$5,197 costs of compliance with the final rule in the first year would be approximately .01 percent of the average value of receipts for these entities. Therefore, there is not a significant economic impact on contractors with 50 to 500 employees.

Notwithstanding our determination that there is not a significant impact as a result of this rule, OFCCP considered and implemented a number of alternatives in the final rule as compared to what was proposed in the NPRM. As noted in the preamble, the final rule provides an exception that permits contractors with a total workforce of 100 or fewer employees to compare the individuals with disabilities in their entire workforce to the 7 percent goal. Further, the final rule does not adopt the following proposals: review personnel processes on an annual basis (§ 60-741.44(b)); review physical and mental qualification standards on an annual basis (§ 60-741(c)); establish linkage agreements with three disability-related agencies or organizations to increase connections between contractors and individuals with disabilities seeking employment (§ 60-741.44(f)); take certain specified actions to internally disseminate its affirmative action policy (§ 60-

---

<sup>24</sup> In order to calculate this figure, OFCCP averaged the total receipts of firms with 100 to 499 employees provided by the SBA, Office of Advocacy. See Firm Size Data, [available at www.sba.gov/advo/research/data.html#us](http://www.sba.gov/advo/research/data.html#us). Since the data was issued in 2007, OFCCP utilized a compound 2007-2008 Consumer Price Index inflation rate equaling 6.8% (1.0285 x 1.0385) to calculate the 2009 average receipts of \$43,547,170 per year.



741.44(g)); and train personnel on specific topics related to the employment of individuals with disabilities (§ 60-741.44(j)). After consideration of the comments and taking into account the expected utility of these provisions in light of the burden that contractors would incur to comply with the proposals, OFCCP decided not to incorporate the majority of these proposals into the final rule, and instead retains the language in the existing rule. These changes will substantially decrease the burden on small entities.

The significant benefits to individuals with disabilities, as well as to contractors, are discussed extensively in the Section-by-Section Analysis of the final rule and in the discussion of the final rule's conformity with Executive Order 12866. Although the primary objective of the final rule is to strengthen the affirmative action requirements of section 503 to employ and advance in employment individuals with disabilities, the rule will benefit both individuals with disabilities and contractors. As modified, the final rule provides contractors mechanisms for collecting data on applicants and employees with disabilities and promotes accountability by requiring contractors to review the effectiveness of their affirmative action efforts. The benefits of proactive recruitment particularly will accrue to individuals with disabilities who may face significant barriers in obtaining employment. The revisions will also promote access to a well-trained, job-ready employment pool for contractors.

## **Paperwork Reduction Act**

DATES: Effective Date: This final rule is effective \_\_\_\_\_.

Compliance Dates: Affected parties do not have to comply with the new information collection requirements in §§ 60-741.5(a), paragraph 7; 60-741.42; 60-741.44(f)(4); 60-741.44(k); 60-741.45; and 60-741.80(a) (requirement to maintain records under §§ 60-741.44(f)(4) and 60-741.44(k)) until the Department publishes a Notice in the Federal Register stating that the Office of Management and Budget (OMB) has approved these information collection requirements under the Paperwork Reduction Act of 1995 (PRA), or until this rule otherwise takes effect, whichever date is later.

The Department notes that no person is required to respond to a collection of information request unless the collection of information has a valid OMB Control Number. The new collections of information contained in this rulemaking have been submitted for review to OMB, in accordance with the PRA, under Control Number 1250-0004. That review is ongoing; consequently, the Control Number has not been activated. OFCCP will publish a Notice in the Federal Register announcing the results of OMB's review and the date the information collection requirements will take effect.

The information collection requirements in this final rule relate to the information required to be maintained by contractors regarding their nondiscrimination and affirmative action obligations concerning individuals with disabilities and disclosures workers may make to their employers.

Sections 60-741.40 through 60-741.44 contain currently approved collections of information. Section 60-741.40 requires contractors with 50 or more employees and

contracts of \$50,000 or more to develop an affirmative action program for individuals with disabilities. An affirmative action program is a written program in which contractors annually outline the steps the contractor will take and has already taken to ensure equal employment opportunity for individuals with disabilities. Section 60-741.41 describes a contractor's responsibility to make the affirmative action program available to all employees. Section 60-741.42 outlines the contractor's responsibilities and the process through which applicants are invited to self-identify as an individual with a disability.

Section 60-741.44 outlines the required contents of the affirmative action program. Contractors must develop and include an equal opportunity policy statement in the program. Contractors must also periodically review their personnel processes to ensure that individuals with disabilities are provided equal opportunity and that the contractor is engaged in outreach to recruitment sources. Further, contractors must develop procedures for disseminating the policy internally and externally and establish an audit and reporting system to measure the effectiveness of the affirmative action program.

The currently approved collections of information for these sections are OMB Control Number 1250-0004 (VEVRAA). Information collection package 1250-0004 covers the nondiscrimination and affirmative action requirements of VEVRAA and its implementing regulations. The VEVRAA information collection package estimates that first-time contractors will take 18 hours to develop and document a joint section 503/VEVRAA written affirmative action program. It estimates that existing contractors take 7.5 hours to document and maintain material evidence of annually updating the

affirmative action program. These estimates are based on previously approved information collection requests that quantified the estimated time to develop and maintain a joint section 503/VEVRAA written affirmative action program.

#### **A. Number of Respondents**

OFCCP estimates that 171,275 Federal contractor establishments will be impacted by the final rule. However, OFCCP received comments on the estimated number of contractor establishments, including recommending an establishment count of 285,390 using the Veterans Employment Training Services (VETS) annual report. While OFCCP declines to exclusively rely on the VETS report number, we present an estimated high end for the range of the cost of the rule based on a contractor establishment number of 251,300. This number is based on 2010 VETS data from their pending information collection request.<sup>25</sup>

For the purposes of this information collection request, OFCCP averaged the 171,275 and 251,300 contractor establishment figures to come up with a total of 211,287 establishments that will have to respond to the information collection requirements. All costs and hours in the burden analysis of this final rule are calculated using this adjusted number of federal contractor establishments. Further, the burden for several information collection requirements in the final rule are presented in ranges. These estimates are also averaged for this information collection request.

#### **B. Information Collections**

OFCCP's new information collection request under Control Number 1250-0005 for section 503 includes the burden hours and costs for the new information collection

---

<sup>25</sup>OMB Control Number 1293-0005, Federal Contractor Veterans' Employment Report, VETS - 100/VETS-100A, [http://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201104-1293-003](http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201104-1293-003) (last accessed Aug. 13, 2013).

requirements outlined in the final rule. The burden for several information collection requirements in the final rule are presented in ranges. These estimates are averaged for the purposes of this information collection request.

#### New Standard Form – Voluntary Self-Identification of Disability

This information collection package requests approval of a new standard form entitled “Voluntary Self-Identification of Disability.” Pursuant to § 60-741.42, contractors will use this standard form to invite applicants, hires and employees, to identify as an individual with a disability pre-offer, post-offer, and through an invitation to all employees.

Section 60-741.42(a) requires contractors to extend a pre-offer invitation to self-identify as an “individual with a disability.” OFCCP estimates that contractors working at the company level will take 1.5 hours to review and retrieve existing sample invitations to self-identify, adopt the sample “as is” or make revisions to their existing form, save the invitation to self-identify and incorporate the document in the contractor’s application form.<sup>26</sup> The burden for this provision is 85,656 hours (57,104 contractor companies x 1.5 hours = 85,656 hours).

Applicants for available positions with covered Federal contractors will have a minimal burden complying with § 60-741.42(a) in the course of completing their application for employment with the contractor. Section 60-741.42(a), on pre-offer self-identification, requires contractors to invite all applicants to self-identify whether or not they are a protected veteran. OFCCP estimates that there will be an average of 24 applicants per job vacancy for on average 15 vacancies per year. OFCCP further

---

<sup>26</sup> OFCCP utilized the same ratio (approximately 3.7) of parent companies to number of establishments from the EEO-1 data to determine that among the universe of 251,300 establishments there are approximately 57,104 Federal contractor companies.

estimates that it will take applicants approximately 5 minutes to complete the form. The burden for this provision is 6,388,610 hours (211,287 contractor establishments x 15 listings x 24 applicants x 5 minutes/60 = 6,388,610 hours). This is a third-party disclosure.

OFCCP estimates that it will take contractors 1.5 hours to conduct the invitation to self-identify survey. This includes the time needed to set up procedures to conduct the invitation, distribute communications, and collect and track self-identification forms. OFCCP believes this process will become much more streamlined over time and will likely require significantly less than 1.5 hours in subsequent years. The estimated burden for this provision is 316,931 hours (211,287 contractor establishments x 90 minutes/60 = 316,930 hours).

Contractor employees will have to spend some time reviewing and/or completing the survey. There are approximately 27,400,000 Federal contractor employees. OFCCP estimates that employees will take 5 minutes to complete the self-identification form. The burden for this provision is 2,283,333 hours (27,400,000 employees x 5 minutes/60 = 2,283,333 hours). Utilizing Bureau of Labor Statistics data in the publication “Employer Costs for Employee Compensation” (September 2011), which lists an average total compensation for all civilian workers as \$30.11 per hour, the cost of this provision would be \$68,751,157.

OFCCP further estimates that it will take contractors 15 minutes to maintain self-identification forms. This time includes either manually storing the forms in a filing cabinet or saving them to an electronic database. The burden for this provision is 52,822 hours (211,287 contractor establishments x 15 minutes/60 = 52,822 hours).

#### Section 60-741.44 Required contents of the affirmative action program

OMB Control Number 1250-0004 contains the burden estimates for documenting and maintaining material evidence of annually updating a joint section 503 and VEVRAA affirmative action program. Therefore, there is no additional burden for this provision in this information collection request. OFCCP separately identified below, in § 60-741.44, provisions that are not included in burden estimates currently approved by 1250-0004.

- Section 60-741.44(f) External dissemination of policy, outreach and positive recruitment

Section 60-741.44(f)(1)(ii) requires contractors to send written notification of the company's affirmative action program policies to subcontractors, vendors, and suppliers. Section 60-300.44(f)(1)(ii) of the VEVRAA final rule also requires contractors to send written notification of the company policy related to its affirmative action efforts to all subcontractors, including subcontracting vendors and suppliers. OFCCP therefore expects that contractors will send a single, combined notice, informing subcontractors, vendors and suppliers of their VEVRAA and section 503 policies. Accordingly, OFCCP estimates that there is no additional burden for this provision.

Section 60-741.44(f)(4) requires a contractor to document all activities it undertakes to comply with the obligations of this paragraph, and retain these documents for a period of 3 years. OFCCP estimates that it will take contractors 10 minutes to maintain the outreach and recruitment documentation that would typically be generated as a result of their obligations pursuant to other provisions in the regulations. This does not include any additional time to make the software configuration needed to tell the contractor's computer system to store data for an additional year, as this burden was

previously accounted for in the VEVRAA final rule's burden analysis of § 60-300.80(b). Therefore, the recurring burden for this provision is 35,215 hours (211,287 contractor establishments x 10 minutes/60 = 35,215 hours).

- Section 60-741.44(h) Audit and Reporting System

Section 60-741.44(h)(1)(vi) requires contractors to document the actions taken to meet the requirements of 60-741.44(h), as mandated in the current regulations. OFCCP estimates that it will take contractors 10 minutes to document compliance with this existing provision. Documentation may include, as an example, the standard operating procedure of the system including roles and responsibilities, and audit and reporting timeframes and lifecycles. Because contractors are currently required to have an audit and reporting system, it is expected that some documentation of the process and operation of the system audit already exists. The annual recordkeeping burden of this provision is 35,215 (211,287 contractor establishments x 10 minutes = 856,375/60 = 35,215 hours).

- Section 60-741.44(k) Data Collection and Analysis

Section 60-741.44(k) requires contractors to collect and analyze certain categories of data. Based on feedback received from public comments expressing concerns about the costs of modifying human resources information systems, OFCCP believes that most contractors will have the capability to conduct the required calculations electronically. However, some companies may have to calculate this information manually. Therefore, OFCCP estimates that the average time to conduct the analysis and maintain the relevant documentation would be 1 hour 25 minutes. Relevant documentation could include the report or other written documentation generated by the calculations that explain the methodology, the data used, and the findings and conclusions; the data used to conduct



the calculations for subsequent validation of the results; and other material used by the contractor for the calculations. The recurring burden for this provision is 299,233 hours (251,300 contractor establishments x 85 minutes/60 = 299,233 hours).

No new software needs are anticipated for compliance with § 60-741.44(k), however, a software switch or configuration may be required to tell the system to retain the records for the additional 1 or 2 years, as appropriate. The estimated time needed for making this switch is included with the burden estimate for § 60-71.44(f)(4).

#### Section 60-741.45 Utilization Goal

Section 60-741.45 of the final rule requires contractors to conduct a utilization analysis to evaluate the representation of individuals with disabilities in each job group within the contractor's workforce with the utilization goal established in paragraph (a) of this section. OFCCP estimates that contractors will take 1 hour to conduct the utilization analysis. The burden for this provision is 211,287 hours (211,287 contractor establishments x 1 hour = 211,287 hours).

OFCCP further estimates that it will take contractors an additional 10 minutes to maintain records of the utilization analysis. The recordkeeping burden is 35,215 hours (211,287 contractor establishments x 10 minutes/60 = 35,215 hours).

#### Section 60-741.81 Access to records

Section 60-741.81 of the final rule requires contractors who are the subject of a compliance evaluation or complaint investigation to specify all available record formats and allow OFCCP to select preferred record formats from those identified by the contractor during a compliance evaluation. Pursuant to the regulations implementing the PRA at 5 CFR 1320.4(a)(2), this information collection is excluded from the PRA

requirements because it is related to an “administrative action, investigation, or audit involving an agency against specific individuals or entities.”

### **C. Summary of Costs**

The estimated cost to contractors is based on Bureau of Labor Statistics data in the publication “Employer Costs for Employee Compensation” (September 2011), which lists total compensation for management, professional, and related occupations as \$50.11 per hour and administrative support as \$23.72 per hour. OFCCP estimates that 52 percent of the burden hours will be management, professional, and related occupations and 48 percent will be administrative support.

**Table 1: Total Burden for §§60-741.42; 60-741.44; and 60-741.45**

Recordkeeping Burden Hours	633,861
Reporting Burden Hours	0
Third Party Disclosure Burden Hours	9,077,352
Total Burden Hours	9,711,213

**Table 2: Summary of Burden Hours and Costs for Contractors**

<b>PRA Burden</b>	<b>Burden Hours</b>	<b>Total</b>
<b>741.42 (Survey)</b>	316,931	\$11,866,765.33
<b>741.42 (Survey Employee Burden)</b>	2,283,333	\$68,751,166.67
<b>741.42 (Modifying Application System)</b>	85,656	\$2,342,234.35

<b>741.42 (Recordkeeping)</b>	52,822	\$1,977,794.22
<b>741.44(f)(4) (Recordkeeping Outreach Activities)</b>	52,822	\$1,977,794.22
<b>741.44(h) (Recordkeeping Affirmative Action Program Audit)</b>	35,215	\$1,318,529.48
<b>741.44(k) (Data Collection and Analysis)</b>	299,323	\$11,207,500.59
<b>741.45 (Utilization Analysis)</b>	211,287	\$7,911,176.88
<b>741.45 (Utilization Analysis Recordkeeping)</b>	35,215	\$1,318,529.48
<b>Total</b>	<b>3,372,603</b>	<b>\$108,671,491.22</b>

**Table 3: Summary of Non-Contractor Burden Hours and Costs**

<b>Existing Requirement</b>	<b>Burden Hours</b>	<b>Burden Costs</b>
Section 60-741.42 (Self-Identification)	6,338,610	\$190,855,547

The total estimated cost for applicants to fill out the self-identification form is based on Bureau of Labor Statistics data in the publication “Employer Costs for Employee Compensation” (September 2011), which lists an average total compensation for all civilian workers as \$30.11.

#### **D. Initial Capital or Start-up Costs**

##### **Human Resources Information Systems**

OFCCP estimates on average it will take each contractor, working at the company level, on average 18 hours to have a professional make the needed systems modifications to track applicant and hiring information for individuals with disabilities. This includes IT and administrative professionals to make any necessary changes. The estimated costs for these modifications are based on data from the Bureau of Labor Statistics in the publication “Employer Costs for Employee Compensation” (September 2011), which lists total compensation for a professional of \$47.21 per hour. The cost for these modifications is \$48,525,837 (57,104 contractor companies x \$47.21 = \$48,525,837).

##### **5 CFR 1320.3(b)(1)(i) - Reviewing Instructions**

Several commenters noted that the proposed rule did not quantify the burden of reading and understanding the section 503 revisions on contractors. OFCCP acknowledges that 5 CFR 1320.3(b)(1)(i) requires agencies to include in the burden analysis for new information collection requirements the estimated time it takes for contractors to review and understand the instructions for compliance. In order to minimize the burden, OFCCP will publish several compliance assistance materials including factsheets and “Frequently Asked Questions.” OFCCP will also host webinars for the contractor community that will describe the key provisions in the final rule.

OFCCP estimates it will take, on average, 2.5 hours to have a management professional at each establishment either read compliance assistance materials provided by OFCCP or participate in an OFCCP webinar to learn about the new requirements of the final rule. The estimated cost of this burden is based on data from the Bureau of Labor Statistics in the publication “Employer Costs for Employee Compensation”

(September 2011), which lists total compensation for a management professional at \$50.11. Therefore, the estimated burden for the capital and start-up costs is 528,217 hours (211,287 contractor establishments x 2.5 hours = 528,217 hours). We calculate the total estimated cost for rule familiarization as \$26,468,979 (528,217 hours x \$50.11/hour = \$26,468,979).

### **Operations and Maintenance Costs**

OFCCP estimates that the contractor will have some operations and maintenance costs in addition to the burden calculated above.

#### 60-741.42 Invitation to Self Identify

OFCCP estimates that the contractor will have some operations and maintenance cost associated with the invitations to self-identify. The contractor must invite all applicants to self-identify at both the pre-offer and post-offer stage of the employment process. Given the increasingly widespread use of electronic applications, any contractor that uses such applications would not incur copy costs. However, to account for contractors who may still choose to use paper applications, we are including printing and/or copying costs. Therefore, we estimate a single one page form for both the pre- and post-offer invitation. Assuming contractors using a paper-based application system, used 24 applications for an average of 15 listings per establishment, the minimum estimated total cost to contractors will be \$1,217,002 (42,257 establishments x 360 copies x \$.08 = \$1,217,002).

These paperwork burden estimates are summarized as follows:

Type of Review: New collection.

Agency: Office of Federal Contract Compliance Programs, Department of Labor.

Title: Section 503 of the Rehabilitation Act of 1973, as amended

OMB ICR Reference Number: 1250-0005

Affected Public: Business or other for-profit; individuals.

Estimated Number of Annual Responses: 9,711,213

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours:

Estimated Total Initial and Other Costs: \$375,738,856

The estimated \$375,738,856 is the total of the PRA costs resulting from the new requirements of this final rule.

### **Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

### **Unfunded Mandates Reform Act of 1995**

For purposes of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, this final rule includes a Federal mandate that may result in excess of \$100 million in

expenditures in the private sector in any one year. Accordingly, in compliance with 2 U.S.C. 1532, OFCCP provides the following written statement. All references to other sections of this final rule are incorporated by reference pursuant to 2 U.S.C. 1532(c).

- (1) The final rule is authorized by the section 503 of the Rehabilitation Act.
- (2) A qualitative and quantitative assessment of the anticipated costs and benefits of this final rule, including the costs and benefits to the private sector, are set forth in the Regulatory Procedures section of the final rule (specifically the sections describing Executive Orders 12866 and 13563, the Regulatory Flexibility Act, and the Paperwork Reduction Act) and the Section-by-Section Analysis in the preamble to the final rule. OFCCP anticipates no effect of the final rule on health, safety, and the natural environment not otherwise discussed in the sections set forth above.
- (3) Estimates of future compliance costs are set forth in the Regulatory Procedures section of the final rule (specifically the sections describing Executive Orders 12866 and 13563, the Regulatory Flexibility Act, and the Paperwork Reduction Act). OFCCP anticipates none of the disproportionate budgetary effects of the final rule set forth in 2 U.S.C. 1532(a)(3)(B).
- (4) To the extent feasible and relevant, OFCCP has estimated the effect of the final rule on the national economy in the Regulatory Procedures section of the final rule (specifically the sections describing Executive Orders 12866 and 13563, the Regulatory Flexibility Act, and the Paperwork Reduction Act).
- (5) The provisions of 2 U.S.C. 1532(a)(5) do not apply to this final rule.

Finally, OFCCP identified, considered, and implemented a reasonable number of

regulatory alternatives that were the least burdensome alternative. In those cases where OFCCP did not select the least burdensome alternative, it has provided an explanation of the reasons these suggestions were not adopted in the corresponding section of the Section-by-Section Analysis in the preamble to the final rule and/or the Regulatory Procedures section of the final rule (specifically the sections describing Executive Orders 12866 and 13563, the Regulatory Flexibility Act, and the Paperwork Reduction Act).

#### **Executive Order 13132 (Federalism)**

OFCCP has reviewed this final rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have “federalism implications.” This rule will not “have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

#### **Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)**

This final rule does not have tribal implications under Executive Order 13175 that requires a tribal summary impact statement. The final rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes or on the distribution of power and responsibilities between the Federal government and Indian tribes.



**Effects on Families**

The undersigned hereby certifies that the final rule would not adversely affect the well-being of families, as discussed under section 654 of the Treasury and General Government Appropriations Act, 1999.

**Executive Order 13045 (Protection of Children)**

This final rule would have no environmental health risk or safety risk that may disproportionately affect children.

**Environmental Impact Assessment**

A review of this final rule in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq.; the regulations of the Council on Environmental Quality, 40 CFR 1500 et seq.; and DOL NEPA procedures, 29 CFR part 11, indicates the final rule would not have a significant impact on the quality of the human environment. There is, thus, no corresponding environmental assessment or an environmental impact statement.

**Executive Order 13211 (Energy Supply)**

This final rule is not subject to Executive Order 13211. It will not have a significant adverse effect on the supply, distribution, or use of energy.

**Executive Order 12630 (Constitutionally Protected Property Rights)**

This final rule is not subject to Executive Order 12630 because it does not involve implementation of a policy that has takings implications or that could impose limitations on private property use.

**Executive Order 12988 (Civil Justice Reform Analysis)**

This final rule was drafted and reviewed in accordance with Executive Order 12988 and will not unduly burden the Federal court system. The final rule was: (1) reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct and to promote burden reduction.

**List of Subjects in 41 CFR part 60-741**

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Individuals with disabilities, Investigations, and Reporting and recordkeeping requirements.

/S/

**Patricia A. Shiu**

Director, Office of Federal Contract Compliance Programs

Accordingly, under authority of 29 U.S.C. 793, Title 41 of the Code of Federal Regulations, Chapter 60, part 60-741 is revised to read as follows: